Preface

When you take a look at Muslims living in Muslim countries, you find out that they are hardly organized. It is commonplace to find some cutting the line at a bus stop or at a food store. When it is time for salaah however, they stand together one line without any commotion. Many talk over each other, but during the Friday khutbah, they remain quiet. It's almost accepted amongst them to be *always* late, yet the athaan is always called on time.

Have you ever wondered why?

It is because the Islamic System, or Shari'ah, inculcates organization and justice in the lives of the Muslims. Unfortunately, they are not following it anymore. Additionally, Shari'ah is commonly misinterpreted to denote only the laws of punishments and barely anything else. Shari'ah however, is universal in its essence. It guides and governs all aspects of a Muslim's life. The rule of Shari'ah has prevailed for over 1200 years, more than any other system on the face of this earth. Why? Because it is divine decree from The Creator Who knows what is best for His creation.

Shari'ah started with the beginning of revelation; with the word Iqra'. The prophet (Peace Be Upon Him) carried it and gave it to the sahaaba who passed it on to the following generations.

"… Then the cities of Islam grew, and illiteracy disappeared from among the Arabs because of their constant occupation with the Qur'an. After that, the development of Fiqh took place. Fiqh was perfected and came to be a craft and a science. The Qur'an readers were no longer called Qur'an readers but Fuqaha' (jurists) and religious scholars. " [Ibn Khaldun, al-Muqaddinah]

Ibn Al Qayyim stated, "The need for Fuqaha' is more important to the people than food and drink. Obedience to them is more important than obedience to your parents." He then quoted this ayah:

يَا أَيُّهَا الَّذِينَ آمَنُواْ أَطِيعُواْ اللّهَ وَأَطِيعُواْ الرَّسُولَ وَأُوْلِي الأَمْرِ مِنكُمْ فَإِن تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللّهِ
وَالرَّسُولِ إِن كُنتُمْ تُؤْمِنُونَ بِاللّهِ وَالْيَوْمِ الآخِرِ ذَلِكَ خَيْرٌ وَأَحْسَنُ تَأْوِيلاً

"O you who believe! Obey Allâh and obey the Messenger (Muhammad SAW), <u>and those of you (Muslims) who are in authority [fuqaha']</u>. (And) if you differ in anything amongst yourselves, refer it to Allâh and His Messenger (SAW), if you believe in Allâh and in the Last Day. That is better and more suitable for final determination" (alQur'an 4:59)

This doesn't mean that one should revolt against their parents; it's just that they deserve a different level of obedience that is not at the expense of the other. The need for Muslim scholars is more important to people than food or drink. Food sustains you physically, while scholars sustain you mentally, spiritually and with regards to your deen.

Faqeeh Says...

As-salamu 'Alaykum my dear students!

My name is Faqeeh.

Faqeeh is a word derived from Fiqh which in English means "Jurist." Faqeeh is a title given to the Muslim scholar who specializes in Fiqh and studies issues pertinent to Shari'ah and Islamic law.

I'll be your guide throughout this class of "Evolution of Fiqh" to explain to you and help you understand some of the chapters and terminologies used in this booklet. You'll be seeing me around frequently under "Faqeeh says…" whenever I think you'll need me to explain something to you.

I ask Allah to help you understand Shari'ah, to teach you Fiqh and to make of you a Faqeeh of today and tomorrow.

At the end of this course, ISA you will be able to:

- Begin your study of comparative Fiqh with confidence
- Appreciate and share with others the blessed lives of the four Imams
- Understand the history of Islamic Law, how it started, stages of development, and where we are today
- Understand the reasoning behind different opinions
- Carry on empowered dialogues with people of opposing views
- Discuss issues of Fiqh with proper etiquette

Introduction

Knowledge is Sacred

وَمِنَ النَّاسِ وَالدَّوَابِّ وَالْأَنْعَامِ مُخْتَلِفٌ أَلْوَانُهُ كَذَلِكَ إِنَّمَا يَخْشَى اللَّهَ مِنْ عِبَادِهِ الْعُلَمَاء إِنَّ اللَّهَ عَزِيزٌ غَفُورٌ

"And of men and AdDawâb (moving living creatures, beasts, etc.), and cattle, in like manner of various colours. <u>It is only those who have knowledge among His slaves that fear Allâh</u>. Verily, Allâh is AllMighty, OftForgiving" (alQur'an 35:28)

1. **The Importance of Knowledge:**
   - The default state of a human being is one of ignorance, not knowledge.

وَاللّهُ أَخْرَجَكُم مِّن بُطُونِ أُمَّهَاتِكُمْ لاَ تَعْلَمُونَ شَيْئًا وَجَعَلَ لَكُمُ الْسَّمْعَ وَالأَبْصَارَ وَالأَفْئِدَةَ لَعَلَّكُمْ تَشْكُرُونَ

"And Allâh has brought you out from the wombs of your mothers while you know nothing. And He gave you hearing, sight, and hearts that you might give thanks (to Allâh)" (alQur'an 16:78)

- It is a favor from Allah swt that He provides us with knowledge.

عَلَّمَ الْإِنسَانَ مَا لَمْ يَعْلَمْ

"Has taught man that which he knew not" (alQur'an 96:5)

- Acquiring knowledge is an obligation.

Anas ibn Malik reported that the Prophet (Peace Be Upon Him) said: "The seeking of knowledge is obligatory for every Muslim" (Ibn Majah)

- Through knowledge superiority of Adam over the angels was proven.

وَعَلَّمَ آدَمَ الأَسْمَاء كُلَّهَا ثُمَّ عَرَضَهُمْ عَلَى الْمَلاَئِكَةِ فَقَالَ أَنبِئُونِي بِأَسْمَاء هَـؤُلاء إِن كُنتُمْ صَادِقِينَ

"And He taught Adam all the names (of everything), then He showed them to the angels and said, "Tell Me the names of these if you are truthful."" (alQur'an 2:31)

- Knowledge is an instrument, not a goal. It should be used to reach a higher goal of worshipping Allah and seeking His pleasure and reward.

2. **Different Divisions of Knowledge and Islamic Sciences**
Despite the fact that we've lost a lot of books of Islamic Sciences when the Mongols wiped out the Islamic libraries in Iraq, we are still left with a huge legacy of knowledge. All can be divided into 2 cateogries:

i *Uloom al Ghayyaat* (Teleological Sciences, or Sciences of a Purpose): Studying them should be a goal, not just a means. Examples include the Qur'an ,the sunnah, Aqeedah, Fiqh, and Akhlaaq.

ii *Uloom al Wasaa'il* (Instrumental sciences): Branches of Islamic sciences, which the scholars have developed to support the understanding of the sciences of a purpose.
- For Quran: Arabic, Tafseer, Fundamentals of Tafseer, Tajweed, Uloom alQur'an
- For Hadith: Usool al hadith, Usool al fiqh, Uloom al Arabia

3. Fiqh, the Master of All Islamic Sciences. Why?
Some scholars considered Fiqh the most honorable science because it takes from all other branches of Shari'ah. For example, fuqaha' study the Qur'an and Hadith to deduce laws of fiqh. The Qur'an speaks about matters of Aqeedah, commandments and prohibitions, and stories of the past and future. Since commandments and prohibitions are matters of fiqh, some scholars say that fiqh is 1/3 of our deen. Generally, Fiqh is the practical implementation of the Qur'an and Sunnah.

4. Fiqh as Fard al-'Ayn (Individual Obligation)
There are many aspects of fiqh that are considered an individual obligation, meaning that it is an obligation upon each individual to learn and implement properly. The scholars call this the minimum you must know. You will be held accountable for this minimum. In addition, that which allows you to fulfill something obligatory becomes obligatory in itself. Examples include wudu', Salaah, Fasting, etc. Others don't become an individual obligation until certain conditions are met first. Hajj becomes fard 'Ayn when you have the means to go (i.e. money, visa, health, etc). At this point it is obligatory to learn the rules of Hajj. Don't depend on your guide because he won't necessarily be able to help you; it's very easy to get lost during hajj. The same goes for Zakah, marriage, and business transactions. Umar Ibn Khataab would beat people out of the market and tell them to go to the Masjid to learn the fiqh of trade before coming to the markets.

5. Fiqh as Fard al-Kifayah (Community Obligation)
Fard al-Kifayah is an obligation upon the community as a whole. If no one in the community performs it, then the whole community is sinful. If some members perform it, then that will be sufficient and the liability will be removed from the whole community. An example of that is the funeral prayer.

Ibn Taymiyyah mentioned that people are like birds, they flock together, they see other people and they imitate them. By looking around and seeing how others pray, they begin practicing in the same way. It is important to know how and why we practice our deen the way we do. When we reach the age of puberty, we need to learn and verify whether what we learned in our childhood (from parents, elders, etc.) is correct.

Defining the Code

Faqeeh Says…

Now here are some terms that you need to get familiar with; you might find an English literal meaning for them, but the Arabic term is more profound. So you need to state learning how to say them in Arabic keeping in mind their profound meaning.

Technical Definitions

- **Fiqh:**

Literally Means: The True understanding of what is intended
Technically Means: The science of deducing Islamic laws from evidences found in the sources of Islamic Law

"To whomsoever Allah wishes good, He gives the Fiqh (true understanding) of the religion" (alBukhari and Muslim)

→ ***What is the nature of fiqh?***
Even though fiqh seems like a set of rules and practices, it is still considered part of your faith and belief. We are obligated to believe that we abstain from haraam actions because they have been made forbidden by Allah. Imam at-Tahawi in his Aqeedah book mentioned the issue of the permissibility of wiping over the socks as a part of aqeedah because the Shia and the Khawarij did not believe in this.

→ ***How can a person become a faqeeh?***
Go to Islamic law school. If you can't, then read as much books of fiqh as possible. الدرر البهية للشوكاني

→ ***What was fiqh like before Islam?***
Nations and tribes had their own laws and customs, or fiqh, before Islam. When Allah revealed the Qur'an, it didn't completely cancel the rules before it. Some were from the time of Ibrahim, like the rituals of Hajj. Others, like Qisaas (retribution) were kept to deter people from falling into evil actions. Some laws were upheld while others are abrogated. An example of abrogation is when Khawlah came to the Prophet (Peace Be Upon Him) asking him what to do since her husband pronounced Dhihar (haram to approach, just like his mother) on her. The Prophet (Peace Be Upon Him) extended the old rule that it is final divorce. However, Allah cancelled this position.

وَالَّذِينَ يُظَاهِرُونَ مِن نِّسَائِهِمْ ثُمَّ يَعُودُونَ لِمَا قَالُوا فَتَحْرِيرُ رَقَبَةٍ مِّن قَبْلِ أَن يَتَمَاسَّا ذَلِكُمْ تُوعَظُونَ بِهِ وَاللَّهُ بِمَا
تَعْمَلُونَ خَبِيرٌ (3) فَمَن لَّمْ يَجِدْ فَصِيَامُ شَهْرَيْنِ مُتَتَابِعَيْنِ مِن قَبْلِ أَن يَتَمَاسَّا فَمَن لَّمْ يَسْتَطِعْ فَإِطْعَامُ سِتِّينَ مِسْكِينًا
ذَلِكَ لِتُؤْمِنُوا بِاللَّهِ وَرَسُولِهِ وَتِلْكَ حُدُودُ اللَّهِ وَلِلْكَافِرِينَ عَذَابٌ أَلِيمٌ

And those who make unlawful to them (their wives) (by Az-Zihâr) and wish to free themselves from what they uttered, (the penalty) in that case (is) the freeing of a slave before they touch each other. That is an admonition to you (so that you may not return to such an ill thing). And Allâh is All-Aware of what you

do. And he who finds not (the money for freeing a slave) must fast two successive months before they both touch each other. And for him who is unable to do so, he should feed sixty of Miskîn (poor). That is in order that you may have perfect Faith in Allâh and His Messenger. These are the limits set by Allâh. And for disbelievers, there is a painful torment. (alQur'an 58:3-4)

→ ***How does Fiqh work as the Islamic bond in the global Muslim community?***
Fiqh is supposed to be a source of unity. Lack of knowledge has made it a source of division. Hijab for instance is supposed to unify the appearance of Muslim women. The same goes for the beard and the shalwar for men. However, when Ramadhan comes, you always find people arguing about moon sighting, the number of rak'ahs for taraweeh, the speed of the recitation, etc. This can be traced back to the lack of knowledge and acceptance of other valid views.

- **Shari'ah:**

Literally Means: The straight path. It is also used to denote a stream or a river.
Technically Means: The divine revelation and knowledge which is only obtained from the Qur'an and Sunnah.

ثُمَّ جَعَلْنَاكَ عَلَى شَرِيعَةٍ مِّنَ الْأَمْرِ فَاتَّبِعْهَا وَلَا تَتَّبِعْ أَهْوَاءَ الَّذِينَ لَا يَعْلَمُونَ

"Then We put you, [O Muhammad], on an ordained way concerning the matter [of religion]; so follow it and do not follow the inclinations of those who do not know" (alQur'an, 45:18)

→ ***Were there other "Shari'ahs before Islam?***
There existed other Shari'ahs like those of the Jews, Christians, Persians, etc.

→ ***What was the Shari'ah of the Arabs before Islam?***
They partially followed of the Shari'ah of Ibrahim, especially in Hajj. They did it in their own way though. Another example is the rebuilding of the Ka'bah. They also believed that the water of Zamzam is blessed. When the Prophet (Peace Be Upon Him) conquered Makkah, he found a picture of Ibrahim and Ismail inside the Ka'bah divining arrows. He got mad and said that this was a lie against Ibrahim.

- **Tashree' (legislation):**

Literally means: The process of Legislation
Technically means: Establishing the Shari'ah, elucidating the rulings and canonizing the law

شَرَعَ لَكُم مِّنَ الدِّينِ مَا وَصَّى بِهِ نُوحًا وَالَّذِي أَوْحَيْنَا إِلَيْكَ وَمَا وَصَّيْنَا بِهِ إِبْرَاهِيمَ وَمُوسَى وَعِيسَى أَنْ أَقِيمُوا
الدِّينَ وَلَا تَتَفَرَّقُوا فِيهِ كَبُرَ عَلَى الْمُشْرِكِينَ مَا تَدْعُوهُمْ إِلَيْهِ اللَّهُ يَجْتَبِي إِلَيْهِ مَن يَشَاءُ وَيَهْدِي إِلَيْهِ مَن يُنِيبُ

"He has ordained for you of religion what He enjoined upon Noah and that which We have revealed to you, [O Muhammad], and what We enjoined upon Abraham and Moses and Jesus – to establish the religion and not be divided therein. (alQur'an, 42:13)

The two different sources of Tashree' in comparison:

Divine Legislation	Human Legislation
The primary sources are the Qur'an and Sunnah	The source is humans (parliament, congress, etc.)
For disobedience we are held responsible in this life and in the hereafter.	For disobedience we are held responsible in this life ("Everything is legal until you get caught")
Accountability is before Allah	Accountability is to the law of the land
Shari'ah defines the universal rules and is unchangeable. However, the outcome of the general rules are subject to change (i.e. Imam Shafi'i gave different fatwas in Iraq than in Egypt)	Laws are changeable according to popular opinion (ex. Homosexuality in some countries is becoming acceptable)
Diving Legislation considers both positive and negative repercussions of laws (i.e. there is reward for doing good and punishment for the sins)	Human Legislation only considers the negative repercussions of the law (i.e. usually emphasize the negative, if you pay $10,000 extra in taxes, you don't get rewarded. If you pay a penny less, you get fined)

What Then Is the "Evolution of Fiqh"?

Evolution of Fiqh – The legal science which studies the historical factors behind the formulation of Fiqh, its sources (the Shari'ah), the emergence of the Fuqaha' (Jurists), and the development of the various Madhahib (Schools of Thought), starting from the beginning of the revelation along throughout the different eras until today.

→ Interchangeable Terminology!
Defining the relationship amongst the different terms:

- **Shari'ah:** The source of Fiqh and Islamic law
- **Tashree'**: The process/procedure
- **Fiqh:** The outcome, the deduction
- **The Evolution of Fiqh**: The history of all

Many English books use the terms Shari'ah and Fiqh interchangeably. Please be aware of the difference.

The Distinction between Fiqh and Shari'ah:

Shari'ah	Fiqh
The body of revealed laws	The body of the rulings deduced from those laws
Shari'ah is fixed and unchangeable	Subject to change based on circumstances
The laws of Shari'ah are considered general principles	The rules of fiqh are specific and detailed

Who is the Musharri'ee?

1. Allah (swt)

الْيَوْمَ أَكْمَلْتُ لَكُمْ دِينَكُمْ وَأَتْمَمْتُ عَلَيْكُمْ نِعْمَتِي وَرَضِيتُ لَكُمُ الإِسْلاَمَ دِينًا

"This Day I perfected your Religion for you, completed My favor upon you, and have chosen for you Islam as your religion" (alQur'an 5:3)

- Allah is the ultimate musharri'ee (*law-maker*).

2. The Messenger of Allah

وَمَا آتَاكُمُ الرَّسُولُ فَخُذُوهُ وَمَا نَهَاكُمْ عَنْهُ فَانتَهُوا

"And Whatever the Messenger has given you – take; and what he has forbidden you – refrain from" (alQur'an 59:7)

- The Prophet was a musharri'ee, but not an independent one. He used to make ijtihad and Allah corrected his mistakes.

3. The Sahabah: were they lawmakers?

- They did not initiate the law but were given a certain capacity of ijtihad in certain areas to organize and use the rules of fiqh. For example, after conquering the lands of Persia, Umar imposed agricultural taxes on the Persians instead of dividing the between the soldiers.

4. The Fuqaha': were they lawmakers?

- No, But they are the ones who canonized it and made it in the form that we now know.

→ What are the sources of Tashree'?

1. Qur'an : Unanimous Agreement

2. Sunnah : Unanimous Agreement

3. Anything else?
   General Agreement – Ijmaa' and Qiyyas
   General Disagreement – Statement of a Sahabi, the Practice of Ahlul-Medina (Imam Malik)

The Story Begins

How will we study the development of fiqh?
Some scholars organize the development of fiqh based on the human life cycle: infancy, childhood, etc. Here stages will be divided by the characteristics of the major events and developments that took place in fiqh and in the Islamic state.

Stages of Development

1. **Stage One: Era of the Apostleship**
   The Foundation
   13BH-11H/609CE-632CE

2. **Stage Two: Era of the Righteous Khulafa'**
   Establishment of the Law
   11H-40H/632CE-661CE

3. **Stage Three: Era of the Young Sahabah and the Tabi'een**
   Narration of the Hadeeth
   41H-132H/662CE-753CE

4. **Stage Four: Era of the Great Imams of Fiqh**
   Building and Flowering
   132H-339H/753CE-960CE

5. **Stage Five: Era of the Four Madhahib**
   Madhab Rivalry
   339H-656H/960CE-1258CE

6. **Stage Six: Era of Taqleed (blind following)**
   Stagnation and Decline
   656H-1342H/1258CE-1924CE

7. **Stage Seven: Reformation Era**
   Islamic Fiqh Wakefulness
   1342H-Today/1924CE-Today

Stage One

Era of the Apostleship

The Foundation (13BH – 11BH/ 609CE – 632CE)

مَّا أَفَاءَ اللَّهُ عَلَى رَسُولِهِ مِنْ أَهْلِ الْقُرَى فَلِلَّهِ وَلِلرَّسُولِ وَلِذِي الْقُرْبَى وَالْيَتَامَى وَالْمَسَاكِينِ وَابْنِ السَّبِيلِ كَيْ لَا يَكُونَ
دُولَةً بَيْنَ الْأَغْنِيَاءِ مِنكُمْ وَمَا آتَاكُمُ الرَّسُولُ فَخُذُوهُ وَمَا نَهَاكُمْ عَنْهُ فَانتَهُوا وَاتَّقُوا اللَّهَ إِنَّ اللَّهَ شَدِيدُ الْعِقَابِ

Allah says [in Surah alHashr]: "What Allah gave as booty (Fai') to His Messenger (Muhammad SAW) from the people of the townships, - it is for Allah, His Messenger (Muhammad SAW), the kindred (of the Messenger Muhammad SAW), the orphans AlMasakin (the poor), and the wayfarer, in order that it may not become a fortune used by the rich among you. And whatsoever the Messenger (Muhammad SAW) gives you, take it, and whatsoever he forbids you, abstain (from it), and fear Allah. Verily, Allah is Severe in punishment" (alQur'an 59:7).

- This ayah includes a command from Allah that we must obey His Messenger Muhammad (Peace be upon him).

al-Miqdam ibn Ma'di Karib narrates the Messenger of Allah (Peace be upon him) said: "Verily, I have been given the Qur'an and something similar to it with it." (Abu Dawood and Ahmad)

- This refers to the fact that the Qur'an and the Sunnah are similar in status in terms of both being sources of legislation and authority.

Geographical and Political Preview: The Arabian Peninsula



- The Arabian Peninsula consisted of many parts; namely Hijaz, Tahama, Najd, and Shaam.
- The Prophet Muhammad (Peace be upon him) and Islam emerged from Makkah, which is part of Hijaz.
- Hijaz was the western belt of the Arabian Peninsula, from Tabuk all the way down to Makkah. It was considered the most civilized region.
- Tahama was the southern belt of the Arabian Peninsula. It extended to Hadramout in Yemen and was characterized with rocky mountains and rough terrain. Yemen was ruled by the Persians then. Yemen and Abyssinia (across the sea) consisted of a huge Christian civilization. Yemen was a fertile battleground between the Christians, the Pagans, and the Persians.
- Najd was the central part of the Arabian Peninsula. It was the most dangerous part of Arabia and that's where the Bedouins resided. Presently, Najd includes Riyad, the capital of Saudi Arabia, and is civilized.
- Shaam was the northern region of the Arabian Peninsula. It extended to the Roman empire, which was Christian. The Roman Empire ruled Shaam, including the Arab tribes that lived in north called Ghassan.

The Persians tried to influence this region but couldn't because the Arabs resisted their beliefs and also because of the pride of the Persians.

- Jews also lived in the Arabian Peninsula, in Yathrib (present-day Medinah), and in Khaybar (north of Medinah)

Notes for this period

- The Prophet (Peace be upon him) lived for 13 years in Makkah as a Messenger and for 10-11years in Madinah. The legislation was different in each area. Traditions in Makkah and Madinah were closely related, though there were some differences between the regions:
  - Makkah was a dead barren valley but was the center of trade and the capital of the Arabian Peninsula.
  - Madinah was an urban, agricultural area so a zakah on harvests was established.
- The Prophet (Peace be upon him) also dealt with international law. He sent the early Muhajireen to Abyssinia for safety. There was also interaction with other faiths: Jews, Christians (i.e. Heraclius who was the head of the Romans).
- The Quraysh were the head tribe in Makkah and still have a special status until today. Uthman ibn Talhah was given keys to Ka'bah, and his descendants continue to be the holders of the keys.
- Politically, the tribal system was followed and implemented. The head of the tribe was the absolute authority. It was very difficult to break allegiance to the tribe. When one person called for assistance, it was said that 10,000 swords would be drawn.
- Islam is based on faith, not tribal affiliation, so when the Islam came, it changed the tribal customs, which was very controversial to the people of Makkah
- A brotherhood was established between Ansaar and Muhajiroon. This was unprecedented because their connection was not based on tribal identity but their Islamic identity.

Periods of Legislation

Faqeeh says:

The early history of Islam at the time of the Messenge of Allah (Peace be upon him) was divided into two period; the Hijrah (migration of the Messenger) draws the distinctive line between them. Therefore, the years spent in Makkah starting with the Apostleship until before the Hijrah were called the Makkan period and the years spent in Madinah after the Hijarah and ending with the death of the Messenger of Allah (Peace be upon him) were called the Madinan period. Got that?!

1. Makkan Period (13BH-0H/609CE-622CE)

Legislative characteristics of this time period include:

- **Laws of Tawheed**
  - Matters of faith and belief
  - Matters of the Hereafter (these verses were revealed before verses regarding specific laws in order to attach people's hearts to their Lord)

Yusuf bin Mahk narrated: "While I was with Aisha, the mother of the Believers, a person from Iraq came and asked, "What type of shroud is the best?" 'Aisha said, "May Allah be merciful to you!

What does it matter?" He said, "O mother of the Believers! Show me (the copy of) your Qur'an," She said, "Why?" He said, "In order to compile and arrange the Qur'an according to it, for people recite it with its Surahs not in proper order." 'Aisha said, "What does it matter which part of it you read first? (Be informed) that the first thing that was revealed thereof was a Surah from Al-Mufassal, and in it was mentioned Paradise and the Fire. When the people embraced Islam, the Verses regarding legal and illegal things were revealed. If the first thing to be revealed was: 'Do not drink alcoholic drinks.' people would have said, 'We will never leave alcoholic drinks,' and if there had been revealed, 'Do not commit illegal sexual intercourse, 'they would have said, 'We will never give up illegal sexual intercourse.' While I was a young girl of playing age, the following Verse was revealed in Mecca to Muhammad: 'Nay! But the Hour is their appointed time (for their full recompense), and the Hour will be more grievous and more bitter.' (54.46) Sura Al-Baqara (The Cow) and Surat An-Nisa (The Women) were revealed while I was with him." Then 'Aisha took out the copy of the Qur'an for the man and dictated to him the Verses of the Surahs (in their proper order)" (alBukhari).

- **Laws of Morality**
  - Prohibition of murder
  - Prohibition of adultery
  - Prohibition of burying one's daughters

- **Basic Rules of Halal and Haram**
  - Many verses related to food

فَكُلُواْ مِمَّا ذُكِرَ اسْمُ اللّهِ عَلَيْهِ إِن كُنتُمْ بِآيَاتِهِ مُؤْمِنِينَ

Allah says [in surah alAn'am]: "So eat of that (meat) on which Allâh's Name has been pronounced (while slaughtering the animal), if you are believers in His Ayât (proofs, evidences, verses, lessons, signs, revelations, etc.)" (alQur'an 6:118)

  - These prohibitions against eating meat slaughtered for other than Allah prevented shirk.

- **Rules of Worship**
  - The first salah that Muslims were obligated to pray was Qiyam al Layl. It was originally obligatory upon the Muslims to pray it every night.

يَا أَيُّهَا الْمُزَّمِّلُ (1) قُمِ اللَّيْلَ إِلَّا قَلِيلًا

Allah says [in Surah alMuzzammil]: "O you wrapped in garments (i.e. Prophet Muhammad SAW). Stand (to pray) all night, except a little" (alQur'an 73:1,2)

  - After one year, Allah made Qiyam al Layl optional but most of the Sahabah maintained the nightly prayers. (*Lesson from Shaykh Yaser: If someone continually gets up to pray in the darkness of the night, longing for the warmth of his bed, he will build self-confidence and self-esteem because he is conquering his desires for the sake of Allah*)

إِنَّ رَبَّكَ يَعْلَمُ أَنَّكَ تَقُومُ أَدْنَى مِن ثُلُثَيِ اللَّيْلِ وَنِصْفَهُ وَثُلُثَهُ وَطَائِفَةٌ مِّنَ الَّذِينَ مَعَكَ وَاللَّهُ يُقَدِّرُ اللَّيْلَ وَالنَّهَارَ عَلِمَ
أَن لَّن تُحْصُوهُ فَتَابَ عَلَيْكُمْ فَاقْرَؤُوا مَا تَيَسَّرَ مِنَ الْقُرْآنِ عَلِمَ أَن سَيَكُونُ مِنكُم مَّرْضَى وَآخَرُونَ يَضْرِبُونَ فِي

الْأَرْضِ يَبْتَغُونَ مِن فَضْلِ اللَّهِ وَآخَرُون يُقَاتِلُونَ فِي سَبِيلِ اللَّهِ فَاقْرَؤُوا مَا تَيَسَّرَ مِنْهُ وَأَقِيمُواالصَّلَاةَ وَآتُوا الزَّكَاةَ وَأَقْرِضُوا اللَّهَ قَرْضًا حَسَنًا وَمَاتُقَدِّمُوا لِأَنفُسِكُم مِّنْ خَيْرٍ تَجِدُوهُ عِندَ اللَّهِ هُوَ خَيْرًاوَأَعْظَمَ أَجْرًا وَاسْتَغْفِرُوا اللَّهَ إِنَّ اللَّهَ غَفُورٌ رَّحِيمٌ

Allah says [in Surah alMuzzammil]: “Verily, your Lord knows that you do stand (to pray at night) a little less than two-thirds of the night, or half the night, or a third of the night, and so do a party of those with you, And Allâh measures the night and the day. He knows that you are unable to pray the whole night, so He has turned to you (in mercy). So, recite you of the Qur'ân as much as may be easy for you. He knows that there will be some among you sick, others travelling through the land, seeking of Allâh's Bounty; yet others fighting in Allâh's Cause. So recite as much of the Qur'ân as may be easy (for you), and perform As-Salât (Iqâmat-as-Salât) and give Zakât, and lend to Allâh a goodly loan, and whatever good you send before you for yourselves, (i.e. Nawâfil non-obligatory acts of worship: prayers, charity, fasting, Hajj and 'Umrah, etc.), you will certainly find it with Allâh, better and greater in reward. And seek Forgiveness of Allâh. Verily, Allâh is Oft-Forgiving, Most-Merciful” (alQur’an 73:20)

- **Rules of Jihad**
  - No fighting was allowed during this time.
  - Rule of Tolerance: patience and forgiveness

Khabbab bin Al-Arat narrated: “We complained to Allah's Apostle (of the persecution inflicted on us by the infidels) while he was sitting in the shade of the Ka'ba, leaning over his Burd (i.e. covering sheet). We said to him, "Would you seek help for us? Would you pray to Allah for us?" He said, "Among the nations before you a (believing) man would be put in a ditch that was dug for him, and a saw would be put over his head and he would be cut into two pieces; yet that (torture) would not make him give up his religion. His body would be combed with iron combs that would remove his flesh from the bones and nerves, yet that would not make him abandon his religion. By Allah, this religion (i.e. Islam) will prevail till a traveler from Sana (in Yemen) to Hadrarmaut will fear none but Allah, or a wolf as regards his sheep, but you (people) are hasty” (alBukhari)

2. Madinan Period (1H-11H/622CE-632CE)

Legislative characteristics of this stage include:

- **Establishing the Law**
  - Three pillars of Islam were established during this period (Hajj, Zakat, fasting) while Shahadah and Salah were established in Makkah.
  - Commercial laws for trade and business
  - Agricultural Laws
  - Criminal and Justice Laws

- **Building Community Order**
  - Establishing brotherhood between the Muhajireen and the Ansaar
  - Civil rules and laws were established.

- Rules of marriage, divorce, and inheritance
- **Rights of Minorities**
  - The rights of the people of the Book were established.
- **International Law**
  - Rules of war, peace, and treaties
  - The Prophet (Peace be upon him) sent envoys to Rome, Persia, Egypt, etc.

'Abdullah bin 'Abbas narrated: “Abu Sufyan bin Harb informed me that Heraclius had sent a messenger to him while he had been accompanying a caravan from Quraish. They were merchants doing business in Sham (Syria, Palestine, Lebanon and Jordan), at the time when Allah's Apostle had truce with Abu Sufyan and Quraish infidels. So Abu Sufyan and his companions went to Heraclius at Ilya (Jerusalem). Heraclius called them in the court and he had all the senior Roman dignitaries around him. He called for his translator who, translating Heraclius's question said to them, "Who amongst you is closely related to that man who claims to be a Prophet?" Abu Sufyan replied, "I am the nearest relative to him (amongst the group)." Heraclius said, "Bring him (Abu Sufyan) close to me and make his companions stand behind him." Abu Sufyan added, Heraclius told his translator to tell my companions that he wanted to put some questions to me regarding that man (The Prophet) and that if I told a lie they (my companions) should contradict me." Abu Sufyan added, "By Allah! Had I not been afraid of my companions labeling me a liar, I would not have spoken the truth about the Prophet. The first question he asked me about him was: 'What is his family status amongst you?' I replied, 'He belongs to a good (noble) family amongst us.' Heraclius further asked, 'Has anybody amongst you ever claimed the same (i.e. to be a Prophet) before him?' I replied, 'No.' He said, 'Was anybody amongst his ancestors a king?' I replied, 'No.' Heraclius asked, 'Do the nobles or the poor follow him?' I replied, 'It is the poor who follow him.' He said, 'Are his followers increasing decreasing (day by day)?' I replied, 'They are increasing.' He then asked, 'Does anybody amongst those who embrace his religion become displeased and renounce the religion afterwards?' I replied, 'No.' Heraclius said, 'Have you ever accused him of telling lies before his claim (to be a Prophet)?' I replied, 'No. ' Heraclius said, 'Does he break his promises?' I replied, 'No. We are at truce with him but we do not know what he will do in it.' I could not find opportunity to say anything against him except that. Heraclius asked, 'Have you ever had a war with him?' I replied, 'Yes.' Then he said, 'What was the outcome of the battles?' I replied, 'Sometimes he was victorious and sometimes we.' Heraclius said, 'What does he order you to do?' I said, 'He tells us to worship Allah and Allah alone and not to worship anything along with Him, and to renounce all that our ancestors had said. He orders us to pray, to speak the truth, to be chaste and to keep good relations with our Kith and kin.' Heraclius asked the translator to convey to me the following, I asked you about his family and your reply was that he belonged to a very noble family. In fact all the Apostles come from noble families amongst their respective peoples. I questioned you whether anybody else amongst you claimed such a thing, your reply was in the negative. If the answer had been in the affirmative, I would have thought that this man was following the previous man's statement. Then I asked you whether anyone of his ancestors was a king. Your reply was in the negative, and if it had been in the affirmative, I would have thought that this man wanted to take back his ancestral kingdom. I further asked whether he was ever accused of telling lies before he said what he said, and your reply was in the negative. So I wondered how a person who does not tell a lie about others could ever tell a lie about Allah. I, then asked you whether the rich people followed him or the poor. You replied that it was the poor who followed him. And in fact all the Apostle have been followed by this very class of people. Then I asked you whether his followers were increasing or decreasing. You replied that they were increasing, and

in fact this is the way of true faith, till it is complete in all respects. I further asked you whether there was anybody, who, after embracing his religion, became displeased and discarded his religion. Your reply was in the negative, and in fact this is (the sign of) true faith, when its delight enters the hearts and mixes with them completely. I asked you whether he had ever betrayed. You replied in the negative and likewise the Apostles never betray. Then I asked you what he ordered you to do. You replied that he ordered you to worship Allah and Allah alone and not to worship any thing along with Him and forbade you to worship idols and ordered you to pray, to speak the truth and to be chaste. If what you have said is true, he will very soon occupy this place underneath my feet and I knew it (from the scriptures) that he was going to appear but I did not know that he would be from you, and if I could reach him definitely, I would go immediately to meet him and if I were with him, I would certainly wash his feet.' Heraclius then asked for the letter addressed by Allah's Apostle which was delivered by Dihya to the Governor of Busra, who forwarded it to Heraclius to read. The contents of the letter were as follows: "In the name of Allah the Beneficent, the Merciful (This letter is) from Muhammad the slave of Allah and His Apostle to Heraclius the ruler of Byzantine. Peace be upon him, who follows the right path. Furthermore I invite you to Islam, and if you become a Muslim you will be safe, and Allah will double your reward, and if you reject this invitation of Islam you will be committing a sin by misguiding your Arisiyin (peasants). (And I recite to you Allah's Statement:) 'O people of the scripture! Come to a word common to you and us that we worship none but Allah and that we associate nothing in worship with Him, and that none of us shall take others as Lords beside Allah. Then, if they turn away, say: Bear witness that we are Muslims (those who have surrendered to Allah).' (3:64). Abu Sufyan then added, "When Heraclius had finished his speech and had read the letter, there was a great hue and cry in the Royal Court. So we were turned out of the court. I told my companions that the question of Ibn-Abi-Kabsha) (the Prophet Muhammad) has become so prominent that even the King of Bani Al-Asfar (Byzantine) is afraid of him. Then I started to become sure that he (the Prophet) would be the conqueror in the near future till I embraced Islam (i.e. Allah guided me to it)." The sub narrator adds, "Ibn An-Natur was the Governor of llya' (Jerusalem) and Heraclius was the head of the Christians of Sham. Ibn An-Natur narrates that once while Heraclius was visiting ilya' (Jerusalem), he got up in the morning with a sad mood. Some of his priests asked him why he was in that mood? Heraclius was a foreteller and an astrologer. He replied, 'At night when I looked at the stars, I saw that the leader of those who practice circumcision had appeared (become the conqueror). Who are they who practice circumcision?' The people replied, 'Except the Jews nobody practices circumcision, so you should not be afraid of them (Jews). 'Just Issue orders to kill every Jew present in the country.' While they were discussing it, a messenger sent by the king of Ghassan to convey the news of Allah's Apostle to Heraclius was brought in. Having heard the news, he (Heraclius) ordered the people to go and see whether the messenger of Ghassan was circumcised. The people, after seeing him, told Heraclius that he was circumcised. Heraclius then asked him about the Arabs. The messenger replied, 'Arabs also practice circumcision.' (After hearing that) Heraclius remarked that sovereignty of the 'Arabs had appeared. Heraclius then wrote a letter to his friend in Rome who was as good as Heraclius in knowledge. Heraclius then left for Homs. (a town in Syrian and stayed there till he received the reply of his letter from his friend who agreed with him in his opinion about the emergence of the Prophet and the fact that he was a Prophet. On that Heraclius invited all the heads of the Byzantines to assemble in his palace at Homs. When they assembled, he ordered that all the doors of his palace be closed. Then he came out and said, 'O Byzantines! If success is your desire and if you seek right guidance and want your empire to remain then give a pledge of allegiance to this Prophet (i.e. embrace Islam).' (On hearing the views of Heraclius) the people ran towards the gates of the palace like onagers but found the doors closed. Heraclius realized

their hatred towards Islam and when he lost the hope of their embracing Islam, he ordered that they should be brought back in audience. (When they returned) he said, 'What already said was just to test the strength of your conviction and I have seen it.' The people prostrated before him and became pleased with him, and this was the end of Heraclius's story (in connection with his faith)" (alBukhari).

* Our present situation is similar to the Andalusian period. After the collapse of the large Islamic state in Spain, Muslims lived under non-Islamic authority (Mudajar).

Examples for the First Codes of Law:

1. **First Constitution (Appendix I)**

- The Prophet (Peace be upon him) had to deal with many different factions of Medinah (Mushriks, Jews, Christians, etc.)
- Political issues propelled the Prophet (Peace be upon him) to become a political leader.
- Two different cultures also had to be accommodated: Aws and Khazraj tribes.
- The constitution had to accommodate and deal with all of these issues.

THE TEXT OF THE CHARTER OF ISLAMIC ALLIANCE
(With commentary indented)

In the Name of Allah, the Most Beneficent, the Most Merciful.

This is a document from Muhammad the Messenger of Allah (Peace be upon him), concerning Muhajireen (Emigrants) and Ansar (Helpers) and those who followed and strove with them.

1. They are one nation to the exclusion of other people.

- This refers to Muslims and the establishment of the Islamic state.
- The Jews expected a Prophet to come from their people, but he came from the Arabs, so the Jews refused to accept him and Islam.

2. The Emigrants of Quraysh unite together and shall pay blood money among themselves, and shall ransom honorably their prisoners. Every tribe of the Helpers unites together, as they were at first, and every section among them will pay a ransom for acquitting its relative prisoners.

- Islam did not come to eliminate culture or change people's identities.

3. Believers shall not leave anyone destitute among them by not paying his redemption money or blood money in kind.
4. Whoever is rebellious or whoever seeks to spread enmity and sedition, the hand of every God-fearing Muslim shall be against him, even if he be his son.
5. A believer shall not kill another believer, nor shall support a disbeliever against a believer.
6. The protection of Allah is one (and is equally) extended to the humblest of the believers.

- A Muslim must always honor another Muslim's protection of an individual.
- **'Abdur-Rahman bin 'Auf narrated: "I got an agreement written between me and Umaiya bin Khalaf that Umaiya would look after my property (or family) in Mecca and I would look after his**

in Medina. When I mentioned the word 'Ar-Rahman' in the documents, Umaiya said, "I do not know 'Ar-Rahman.' Write down to me your name, (with which you called yourself) in the Pre-lslamic Period of Ignorance." So, I wrote my name ' 'Abdu 'Amr'. On the day (of the battle) of Badr, when all the people went to sleep, I went up the hill to protect him. Bilal(1) saw him (i.e. Umaiya) and went to a gathering of Ansar and said, "(Here is) Umaiya bin Khalaf! Woe to me if he escapes!" So, a group of Ansar went out with Bilal to follow us ('Abdur-Rahman and Umaiya). Being afraid that they would catch us, I left Umaiya's son for them to keep them busy but the Ansar killed the son and insisted on following us. Umaiya was a fat man, and when they approached us, I told him to kneel down, and he knelt, and I laid myself on him to protect him, but the Ansar killed him by passing their swords underneath me, and one of them injured my foot with his sword" (alBukhari).

- Bilal was rebuked because he did not honor the protection of another Muslim.
- **Narrated Sa'd ibn AbuWaqqas:**
- **On the day of the conquest of Mecca, Abdullah ibn Sa'd ibn AbuSarh hid himself with Uthman ibn Affan. He brought him and made him stand before the Prophet (peace_be_upon_him), and said: Accept the allegiance of Abdullah, Apostle of Allah! He raised his head and looked at him three times, refusing him each time, but accepted his allegiance after the third time. Then turning to his companions, he said: Was not there a wise man among you who would stand up to him when he saw that I had withheld my hand from accepting his allegiance, and kill him? They said: We did not know what you had in your heart, Apostle of Allah! Why did you not give us a signal with your eye? He said: It is not advisable for a Prophet to play deceptive tricks with the eyes. (abu Dawood)**
- Zaynab, the daughter of the Prophet (Peace Be Upon Him) gave protection to her husband when he got captivated as a mushrik in the battle of badr.

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- لما بعث أهل مكة في فداء أسراهم بعثت زينب بنت رسول الله صلى الله عليه وسلم في فداء أبي العاص بن الربيع بمال وبعثت فيه بقلادة لها كانت خديجة أدخلتها بها على أبي العاص حين بنى عليها قالت فلما رآها رسول الله صلى الله عليه وسلم رق لها رقة شديدة وقال إن رأيتم أن تطلقوا لها أسيرها وتردوا عليها مالها فافعلوا فقالوا نعم يا رسول الله فأطلقوه وردوا عليها الذي لها

الراوي :عائشة - خلاصة الدرجة :إسناده حسن - المحدث :الألباني - المصدر :إرواء الغليل - الصفحة أو الرقم 5/43 :

7. The believers are supported by each other.
8. Whosoever of the Jews follows us shall have aid and succor; they shall not be injured, nor any enemy be aided against them.

- Treated as members of the state.

9. The peace of the believers is indivisible. No separate peace shall be made when believers are fighting in the way of Allah. Conditions must be fair and equitable to all.

- Unified status
- Cannot abandon Muslims in battle

10. It shall not be lawful for a believer, who holds by what is in this document and believes in Allah and the Day of Judgment to help a criminal nor give him refuge. Those who give him refuge and render him shall have the curse and and anger of Allah on the Day of Resurrection. Their indemnity is not accepted.
11. Whenever you differ about a matter, it must be referred to Allah and to Muhammad (Peace be upon him).

- The Jewish community also had to refer to Allah and the Prophet

12. Killing a believer deliberately with no good reason entails killing the killer unless the sponsor deems it otherwise.

- Establishment of capital punishment.

2. The First Inter-Muslim Relationships Treaty (Appendix II)

A COOPERATION AND NON-AGRESSION PACT WITH THE JEWS

The treaty came within the context of another one of a larger framework relating to inter-Muslim relationships.

The most important provisions of the treaty are the following:

1. The Jews of Bani ‘Awf are one community with the believers. The Jews will profess their religion and the Muslims theirs.
2. The Jews shall be responsible for their expenditure, and the Muslims for theirs.
3. If attacked by a third party, each shall come to the assistance of the other.
4. Each party shall hold counsel with the other. Mutual relationship shall be founded on righteousness; sin is totally excluded.
5. Neither shall commit sins to the prejudice of the other.
6. The wronged party shall be aided.
7. The Jews shall contribute to the cost of war so long as they are fighting alongside the believers.
8. Madinah shall remain sacred and inviolable for all that join this treaty.
9. Should any disagreement arise between the signatories to this treaty, then Allah, the All-High, and His Messenger shall settle this dispute.
10. The signatories to this treaty shall boycott Quraysh commercially; they shall also abstain from extending any support to them.
11. Each shall contribute to defending Madinah, in case of a foreign attack, in its respective area (this portion of the treaty caused many Jews to leave Madinah).
12. This treaty shall not hinder either party from seeking lawful revenge.

The Political Atmosphere in Madinah at the Time of this Treaty:

- The Jews in Madinah were very strong and organized.
- Banu Quraydah was the first tribe to breach this treaty.
- This tribe provided access to Madinah to the Quraysh during a time when the Prophet (Peace be upon him) and the believers were under siege.
- It was ruled that the men of this tribe should be killed while the women and children should be enslaved, thereby reducing their population.

Sources of Legislation (Sources of Islamic Law)

1. The Qur'an

وَيَوْمَ نَبْعَثُ فِي كُلِّ أُمَّةٍ شَهِيدًا عَلَيْهِم مِّنْ أَنفُسِهِمْ وَجِئْنَا بِكَ شَهِيدًا عَلَى هَـؤُلاء وَنَزَّلْنَا عَلَيْكَ الْكِتَابَ تِبْيَانًا لِّكُلِّ شَيْءٍ وَهُدًى وَرَحْمَةً وَبُشْرَى لِلْمُسْلِمِينَ

Allah says [in Surah anNahl]: "And (remember) the Day when We shall raise up from every nation a witness against them from amongst themselves. And We shall bring you (O Muhammad SAW) as a witness against these. And We have sent down to you the Book (the Qur'an) as an exposition of everything, a guidance, a mercy, and glad tidings for those who have submitted themselves (to Allâh as Muslims)" (alQur'an 16:89).

إِنَّا أَنزَلْنَا إِلَيْكَ الْكِتَابَ بِالْحَقِّ لِتَحْكُمَ بَيْنَ النَّاسِ بِمَا أَرَاكَ اللّهُ وَلاَ تَكُن لِّلْخَآئِنِينَ خَصِيمًا

Allah says [in Surah anNisa]: "Surely, We have sent down to you (O Muhammad SAW) the Book (this Qur'ân) in truth that you might judge between men by that which Allâh has shown you (i.e. has taught you through Divine Inspiration), so be not a pleader for the treacherous" (alQur'an 4:105).

- The Qur'an was sent down to rule by, not just for barakah.

❖ <u>**Definition of the Qur'an as a Source of Legislation**</u>

- **The book revealed to the Prophet Muhammad (saw) in the Arabic language; the speech of Allah; the miracle that was set up for challenge; that which through its recitation Allah is worshipped. It was transmitted to us through chains of Tawatur (abundant number) which starts in its order with Surah al-Fatihah and ends with Surah an-Naas.**
  - The portion of the definition referring to Prophet Muhammad (Peace be upon him) excludes all other books.
  - The portion of the definition referring to Arabic excludes translations of the Qur'an.
  - A challenge was put forth to make something similar to one surah, but no one could. This challenge is still in effect until this day.
  - The portion of the definition referring to Tawatur provides security and authenticity so that the Qur'an is not subject to error.
  - The portion of the definition that states that the Qur'an ends with Surah an-Naas excludes "Surah alWilaya" made by the Shi'a to support Ali as the Prophet's (Peace be upon him) successor. It also excludes those who try to put the surahs in chronological order.

❖ <u>**The Method of Tashree' in the Qur'an**</u>

- **The dispersion of revelation over the course of 23 years.**
  - This dispersion of ayaat gave the Prophet Muhammad (Peace Be Upon Him) firmness and resolve because when certain situations arose, ayaat were sent down.
- **Initiating new codes of law not previously known in Arab culture.**

- Arabs had never before heard of inheritance laws. The inheritors would race to the house of the deceased and whoever reaches it first and throws his thawb in would inherit everything in the house, including his stepmothers.
- Allah ordained the inheritors and their set portions

يُوصِيكُمُ اللّهُ فِي أَوْلاَدِكُمْ لِلذَّكَرِ مِثْلُ حَظِّ الأُنثَيَيْنِ فَإِن كُنَّ نِسَاء فَوْقَ اثْنَتَيْنِ فَلَهُنَّ ثُلُثَا مَا تَرَكَ وَإِن كَانَتْ وَاحِدَةً فَلَهَا النِّصْفُ وَلأَبَوَيْهِ لِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ مِمَّا تَرَكَ إِن كَانَ لَهُ وَلَدٌ فَإِن لَّمْ يَكُن لَّهُ وَلَدٌ وَوَرِثَهُ أَبَوَاهُ فَلأُمِّهِ الثُّلُثُ فَإِن كَانَ لَهُ إِخْوَةٌ فَلأُمِّهِ السُّدُسُ مِن بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ دَيْنٍ آبَآؤُكُمْ وَأَبناؤُكُمْ لاَ تَدْرُونَ أَيُّهُمْ أَقْرَبُ لَكُمْ نَفْعاً فَرِيضَةً مِّنَ اللّهِ إِنَّ اللّهَ كَانَ عَلِيما حَكِيمًا

Allah says [in Surah anNisa]: "Allah commands you as regards your children's (inheritance); to the male, a portion equal to that of two females; if (there are) only daughters, two or more, their share is two thirds of the inheritance; if only one, her share is half. For parents, a sixth share of inheritance to each if the deceased left children; if no children, and the parents are the (only) heirs, the mother has a third; if the deceased left brothers or (sisters), the mother has a sixth. (The distribution in all cases is) after the payment of legacies he may have bequeathed or debts. You know not which of them, whether your parents or your children, are nearest to you in benefit, (these fixed shares) are ordained by Allah. And Allah is Ever All Knower, All Wise" (alQur'an 4:11).

- **Explaining the ruling of unprecedented events.**
  - Dealt with interaction with non-Muslims.
  - Dealt with codes of war- the Prophet (Peace Be Upon Him) was the first to line up soldiers on the battlefield).
- **Answering questions**
  - Allah revealed the answers to questions posed by Sahabah in the Qur'an.
  - Answers about wine, gambling, menstruation, etc.
- **Establishing the rule of abrogation and amendment**
  - Amending laws can be partial or complete. For example: the gradual prohibition of alcohol. Also, the 'iddah of a widow used to be one year before Islam. As a mercy from Allah, the Qur'an amended this to 4 months and 10 days.

Humaid bin Nafi' narrated: "Zainab bint Abu Salama told me these three narrations: Zainab said: I went to Um Habiba, the wife of the Prophet when her father, Abu- Sufyan bin Herb had died. Um Habiba asked for a perfume which contained yellow scent (Khaluq) or some other scent, and she first perfumed one of the girls with it and then rubbed her cheeks with it and said, "By Allah, I am not in need of perfume, but I have heard Allah's Apostle saying, 'It is not lawful for a lady who believes in Allah and the Last Day to mourn for a dead person for more than three days unless he is her husband for whom she should mourn for four months and ten days.' " Zainab further said: I want to Zainab bint Jahsh when her brother died. She asked for perfume and used some of it and said, "By Allah, I am not in need of perfume, but I have heard Allah's Apostle saying on the pulpit, 'It is not lawful for a lady who believes in Allah and the last day to mourn for more than three days except for her husband for whom she should mourn for four months and ten days.' " Zainab further said, "I heard my mother, Um Salama saying that a woman came to Allah's Apostle and said, "O Allah's Apostle! The husband of my daughter has

died and she is suffering from an eye disease, can she apply kohl to her eye?" Allah's Apostle replied, "No," twice or thrice. (Every time she repeated her question) he said, "No." Then Allah's Apostle added, "It is just a matter of four months and ten days. In the Pre-Islamic Period of ignorance a widow among you should throw a globe of dung when one year has elapsed." I said to Zainab, "What does 'throwing a globe of dung when one year had elapsed' mean?" Zainab said, "When a lady was bereaved of her husband, she would live in a wretched small room and put on the worst clothes she had and would not touch any scent till one year had elapsed. Then she would bring an animal, e.g. a donkey, a sheep or a bird and rub her body against it. The animal against which she would rub her body would scarcely survive. Only then she would come out of her room, whereupon she would be given a globe of dung which she would throw away and then she would use the scent she liked or the like" (alBukhari)

- ❖ **<u>The General Content of the Qur'an</u>**
  - **Information related to faith and belief** (surah 112 Al-Ikhlaas)

قُلْ هُوَ ٱللَّهُ أَحَدٌ (1) ٱللَّهُ ٱلصَّمَدُ (2) لَمْ يَلِدْ وَلَمْ يُولَدْ (3) وَلَمْ يَكُن لَّهُ كُفُوًا أَحَدٌ (4)

"Say (O Muhammad (Peace be upon him)): "He is Allah, (the) One. Allah-us-Samad (The Self-Sufficient Master, Whom all creatures need, He neither eats nor drinks). He begets not, nor was He begotten. And there is none co-equal or comparable unto Him" (alQur'an 112:1-4)

  - **Information related to moral principles and justice** (surah 49 Al-Hujuraat)

يَا أَيُّهَا الَّذِينَ آمَنُوا اجْتَنِبُوا كَثِيراً مِّنَ الظَّنِّ إِنَّ بَعْضَ الظَّنِّ إِثْمٌ وَلَا تَجَسَّسُوا وَلَا يَغْتَب بَّعْضُكُم بَعْضًا أَيُحِبُّ
أَحَدُكُمْ أَن يَأْكُلَ لَحْمَ أَخِيهِ مَيْتًا فَكَرِهْتُمُوهُ وَاتَّقُوا اللَّهَ إِنَّ اللَّهَ تَوَّابٌ رَّحِيمٌ

"O you who believe! Avoid much suspicions, indeed some suspicions are sins. And spy not, neither backbite one another. Would one of you like to eat the flesh of his dead brother? You would hate it (so hate backbiting). And fear Allah. Verily, Allah is the One Who accepts repentance, Most Merciful" (alQur'an 49:12).

  - **Related to deeds and actions, commands and prohibitions.**
  - **Related to the seerah and history.** Some scholars say this is matter of faith because we never met the Prophets.
- ❖ **<u>The Legal Content in the Qur'an</u>**
  1. **Dealings Between Allah and Man**
     a. The different acts of worship which require an intention.
     An ordinary deed can become an act of worship with the proper intention. For example: Taking a bath- you do not need to make an intention if you are doing it simply for refreshment. But if you want to make it an act of worship, you must make your intention.

     b. The code of halal and haram
     You must believe in the permissibility and impermissibility of things. For example: In order to be rewarded for abstaining from alcohol, you must do so because it is a command from Allah, not because science has proven that it leads to liver failure.

2. **Dealings among Men**
   a. Laws ensuring and defending the propagation (Daw'ah) of Islam (Jihad)
   b. Family laws
   c. Trade laws
   d. Criminal laws and the judiciary system

♌ **Food for Thought!**

Hmm! What about the different translations of the Qur'an, can they be a reliable source of legislation?

- No, translations are not considered the Qur'an so they cannot be sources of legislation.

How about different Qira'at (recitations of the Qur'an), are they also a source of legislation?

- Yes, the different Qira'at can be considered a source of legislation because it is still the Qur'an.

❖ **The Makki and Madani**

"والذي لا إله غيره ما نزلت آية من كتاب الله تعالى إلا وأنا أعلم فيمن نزلت وأين نزلت"

Ibn Mas'ood stated: "I swear by the one with whom there is no partner, there is no Ayah in the Qur'an that I don't know when it was revealed and where" (alBukhari).

1. **Definition**
   - The time of revelation with respect to the Hijrah (no matter the location).
   - The majority of ayaat in a particular Surah determine whether it is categorized as Makki or Madani.
2. **Importance to the enactment of law**
   - Teaches us about the gradual enactment of the law.Example: the prohibition of alcohol.
   - Teaches us about the historical background surrounding certain laws (context/historical background of the revelation).
   - The rules of abrogation- the rules revealed in Madinah take precedence over those revealed in Makkah.
3. **General characteristics**
   - Makki: brief guidelines, fundamentals of aqeedah, establish the foundation for laws of morality. The ayaat are very short in length and are very sharp.
   - Madani: long, detailed ayaat regarding explanations of the law.

❖ **The Basis of Legislation in the Qur'an**

- **Brevity of the Law**
  Enacting general codes, not detailed provisions of the law.
- **The removal of difficulty**
  Islamic law was made for the benefit of mankind.

لاَ يُكَلِّفُ اللّهُ نَفْسًا إِلاَّ وُسْعَهَا لَهَا مَا كَسَبَتْ وَعَلَيْهَا مَا اكْتَسَبَتْ رَبَّنَا لاَ تُؤَاخِذْنَا إِن نَّسِينَا أَوْ أَخْطَأْنَا رَبَّنَا وَلاَ تَحْمِلْ عَلَيْنَا إِصْرًا كَمَا حَمَلْتَهُ عَلَى الَّذِينَ مِن قَبْلِنَا رَبَّنَا وَلاَ تُحَمِّلْنَا مَا لاَ طَاقَةَ لَنَا بِهِ وَاعْفُ عَنَّا وَاغْفِرْ لَنَا وَارْحَمْنَا أَنتَ مَوْلاَنَا فَانصُرْنَا عَلَى الْقَوْمِ الْكَافِرِينَ

"<u>Allah burdens not a person beyond his scope.</u> He gets reward for that (good) which he has earned, and he is punished for that (evil) which he has earned. "Our Lord! Punish us not if we forget or fall into error, our Lord! Lay not on us a burden like that which You did lay on those before us (Jews and Christians); our Lord! Put not on us a burden greater than we have strength to bear. Pardon us and grant us Forgiveness. Have mercy on us. You are our MaulB (Patron, Suppor-ter and Protector, etc.) and give us victory over the disbelieving people" (alQur'an 2:286).

  - Example: shortening and combining prayers while traveling.
  - Concessionary laws (Rukhsa): Tayammum is an alternative means of purifying oneself for salah if water cannot be used.
- **The reduction of religious duties**
  The haraam is very few while the halaal is uncountable. Most of what we enjoy in this life is halaal.
  - Example: The reduction of the number of daily prayers from 50 to 5:

Abu Dhar narrated: Allah's Apostle said, "While I was at Mecca the roof of my house was opened and Gabriel descended, opened my chest, and washed it with Zam-zam water. Then he brought a golden tray full of wisdom and faith and having poured its contents into my chest, he closed it. Then he took my hand and ascended with me to the nearest heaven, when I reached the nearest heaven, Gabriel said to the gatekeeper of the heaven, 'Open (the gate).' The gatekeeper asked, 'Who is it?' Gabriel answered: 'Gabriel.' He asked, 'Is there anyone with you?' Gabriel replied, 'Yes, Muhammad I is with me.' He asked, 'Has he been called?' Gabriel said, 'Yes.' So the gate was opened and we went over the nearest heaven and there we saw a man sitting with some people on his right and some on his left. When he looked towards his right, he laughed and when he looked toward his left he wept. Then he said, 'Welcome! O pious Prophet and pious son.' I asked Gabriel, 'Who is he?' He replied, 'He is Adam and the people on his right and left are the souls of his offspring. Those on his right are the people of Paradise and those on his left are the people of Hell and when he looks towards his right he laughs and when he looks towards his left he weeps.' Then he ascended with me till he reached the second heaven and he (Gabriel) said to its gatekeeper, 'Open (the gate).' The gatekeeper said to him the same as the gatekeeper of the first heaven had said and he opened the gate. Anas said: "Abu Dhar added that the Prophet met Adam, Idris, Moses, Jesus and Abraham, he (Abu Dhar) did not mention on which heaven they were but he mentioned that he (the Prophet) met Adarn on the nearest heaven and Abraham on the sixth heaven. Anas said, "When Gabriel along with the Prophet passed by Idris, the latter said, 'Welcome! O pious Prophet and pious brother.' The Prophet asked, 'Who is he?' Gabriel replied, 'He is Idris." The Prophet added, "I passed by Moses and he said, 'Welcome! O pious Prophet and pious brother.' I asked Gabriel, 'Who is he?' Gabriel replied, 'He is Moses.' Then I passed by Jesus and he said, 'Welcome! O pious brother and pious Prophet.' I asked, 'Who is he?' Gabriel replied, 'He is Jesus. Then I passed by Abraham and he said, 'Welcome! O pious Prophet and pious son.' I asked Gabriel, 'Who is he?' Gabriel replied, 'He is Abraham. The Prophet added, 'Then Gabriel ascended with me to a place where I heard the creaking of the pens." Ibn Hazm and Anas bin Malik said: The Prophet said, "Then Allah enjoined fifty prayers on my followers when I returned with this order of Allah, I passed by Moses who asked me, 'What has Allah enjoined on your followers?' I replied, 'He has enjoined fifty prayers on them.' Moses said, 'Go back to your Lord (and appeal for reduction) for your followers will not be able to bear it.' (So I went back to Allah and requested for reduction) and He reduced it to half. When I passed by Moses again and informed him about it, he said, 'Go back to your Lord as your followers will not be able to bear it.' So I returned to Allah and requested for further reduction and half of it was reduced. I again passed by Moses and he said to me: 'Return to your Lord, for your followers will not be able to bear it. So I returned to Allah

and He said, 'These are five prayers and they are all (equal to) fifty (in reward) for My Word does not change.' I returned to Moses and he told me to go back once again. I replied, 'Now I feel shy of asking my Lord again.' Then Gabriel took me till we '' reached Sidrat-il-Muntaha (Lote tree of; the utmost boundary) which was shrouded in colors, indescribable. Then I was admitted into Paradise where I found small (tents or) walls (made) of pearls and its earth was of musk" (alBukhari).

- **The realization of public welfare**
  - Exemplary punishment considers public welfare by deterring people from committing crimes.
  - Takes precedence over individual considerations.
    (Omar suspended the chopping of hands for stealing during the famine in Madinah for the sake of public welfare).
- **The realization of universal values**
  - There is a subject in Usool al-Hiqh at high level called higher objectives of Islamic law, Imam ash-Shatibee was a master this field
  - Islamic law came to preserve five necessities (Ad-Darurat):
    1. Life- capital punishment promotes life, while abortion was prohibited.
    2. Religion- prayer, jihad, apostasy rules were established.
    3. Intellect- prohibition of alcohol, seeking knowledge is obligatory.
    4. Wealth- trade is lawful; riba isn't, inheritance laws, punishment for theft
    5. Lineage- marriage laws, adultery laws
  - Accessories- Islamic law preserves things that enhance the quality of life.
  - Jihad is a universal value. It can be defensive, and also offensive for noble causes.
    We should not be afraid to say that Islam permits fighting for a **noble** cause (to fight for the sake of Allah and for oppressed men, women, and children).

وَمَا لَكُمْ لاَ تُقَاتِلُونَ فِي سَبِيلِ اللّهِ وَالْمُسْتَضْعَفِينَ مِنَ الرِّجَالِ وَالنِّسَاء وَالْوِلْدَانِ الَّذِينَ يَقُولُونَ رَبَّنَا أَخْرِجْنَا مِنْ هَـــذِهِ الْقَرْيَةِ الظَّالِمِ أَهْلُهَا وَاجْعَل لَّنَا مِن لَّدُنكَ وَلِيًّا وَاجْعَل لَّنَا مِن لَّدُنكَ نَصِيرًا

"And what is wrong with you that you fight not in the Cause of Allah, and for those weak, ill-treated and oppressed among men, women, and children, whose cry is: "Our Lord! Rescue us from this town whose people are oppressors; and raise for us from You one who will protect, and raise for us from You one who will help" (alQur'an 4:75).

Fighting should be stopped once peace is offered.

2. The Sunnah of the Messenger of Allah

وَمَا يَنطِقُ عَنِ ٱلْهَوَىٰٓ (3) إِنْ هُوَ إِلَّا وَحْىٌ يُوحَىٰ

Allah says [in Surah anNajm]: "Nor does he speak of (his own) desire. It is only an Inspiration that is inspired" (alQur'an 53:3-4).

These ayaat show the speech of the Prophet (Peace Be Upon Him) has the value of inspiration from Allah.

❖ Definition of the Sunnah

1. **As used by Linguists**
   A way of conduct (Tareeqa), good or bad.

2. **As used by Fuqaha' (Jurists)**
   Something recommended (Mustahab).

3. **As used by Usoolis (Scholars- legal theorists- of Usool al-Fiqh)**
   Whatever comes from the Prophet (Peace Be Upon Him), other than the Qur'an, in the form of speech, actions, or silent approvals. This only includes aspects from after the message was revealed.

4. **As used by Muhaditheen (Scholars of Hadeeth)**
   What has been passed down from the Prophet (Peace Be Upon Him) of his actions, approvals, physical characteristics, moral attributes, etc. (other than the Qur'an). This includes everything pertaining to the Prophet (Peace Be Upn Him) regardless of whether it came before or after the prophethood. The aspects from before the message can be used only as sunnah, not as shari'ah.

5. **As used by specialists in Aqeedah (Theologians)**
   Opposite of innovation (sunnah is the opposite of bid'ah).

♌ Food for Thought!

- Now can you, as a Faqeeh, tell me which definition is pertinent to law and legislation?
  Answer: The Usooli definition

❖ Authority of the Sunnah

مَّنْ يُطِعِ الرَّسُولَ فَقَدْ أَطَاعَ اللّهَ وَمَن تَوَلَّى فَمَا أَرْسَلْنَاكَ عَلَيْهِمْ حَفِيظًا

Allah states [in Surah anNisa]: "He who obeys the Messenger (Muhammad SAW), has indeed obeyed Allah, but he who turns away, then we have not sent you (O Muhammad SAW) as a watcher over them" (alQur'an 4:80).

Al-Awza'i narrates that Hassan ibn Atiyyah said,

"The revelation used to descend on the Messenger of Allah (Peace Be Upon Him) and Jibreel would bring him the Sunnah which interprets that revelation, so the Prophet (Peace Be Upon Him) didn't have any source for his statements, actions and approvals except the Wahi (revelation).

Then he recited:

وَمَا يَنطِقُ عَنِ ٱلۡهَوَىٰٓ (3) إِنۡ هُوَ إِلَّا وَحۡىٌ۬ يُوحَىٰ

"Nor does he speak of (his own) desire. It is only an Inspiration that is inspired" (alQur'an 53:3-4).

- Obey the Prophet (Peace Be Upon Him) by following his example.
- Once a hadith has been confirmed as Sahih (authentic), it is a source of legislation.

❖ **The Qur'aniyyoon**

- They claim that the Qur'an is the only source of legislation.
- They believe that the Prophet Muhammad (Peace Be Upon Him) was a regular man, so there was no reason to follow him.

"لا ألفين أحدكم متكئا على أريكته يأتيه الأمر مما أمرت به أو نهيت عنه فيقول: لا أدري ما وجدنا في كتاب الله اتبعناه"

Abu Rafi' narrated: The Prophet (Peace Be Upon Him) said: "Let me not find one of you reclining on his couch when he hears something regarding me which I have commanded or forbidden and he says about it: 'I do not know. What we found in Allah's Book we have followed" (alBayhaqi, Ahmad, Abu Dawood and others).

- And in another narration:

"ألا وإن ما حرم رسول الله مثل ما حرم الله"

"… but truly what the Messenger of Allah (Peace Be Upon Him) has forbidden is similar to what Allah has forbidden" (alBayhaqi, Ahmad, at-Tirmidhi and Ibn Majah).

Faqeeh Says…

The Qur'aniyyoon are those who claim to abide by the injunctions of the Qur'an and reject any other source of law, including the Sunnah of the Messenger of Allah (Peace Be Upon Him). They do not represent a specific sect but can be found everywhere, at any time and amongst different sects.

❖ **The Role of the Sunnah with the Qur'an**

- **Sunnah explains the meaning of the Qur'an. For example:**

الَّذِينَ آمَنُواْ وَلَمْ يَلْبِسُواْ إِيمَانَهُم بِظُلْمٍ أُوْلَـئِكَ لَهُمُ الأَمْنُ وَهُم مُّهْتَدُونَ

Allah says [in Surah alAn'am]: "It is those who believe (in the Oneness of Allah and worship none but Him Alone) and confuse not their belief with Dhulm (wrong i.e. by worshipping others besides Allah), for them (only) there is security and they are the guided" (alQur'an 6:82).

The companions (May Allah Be Pleased With Them) were scared because they thought that "Dhulm" referred to any transgression so the Prophet (Peace Be Upon Him) explained that it referred to shirk (associating partners with Allah).

Narrated Abdullah: When:"...and confuse not their belief with wrong." (6.82) was revealed, the Prophet's companions said, "Which of us has not done wrong?" Then there was revealed:-- "Verily joining others in worship with Allah is a tremendous wrong indeed." (alBukhari)

Another example:

أُحِلَّ لَكُمْ لَيْلَةَ الصِّيَامِ الرَّفَثُ إِلَى نِسَآئِكُمْ هُنَّ لِبَاسٌ لَّكُمْ وَأَنتُمْ لِبَاسٌ لَّهُنَّ عَلِمَ اللّهُ أَنَّكُمْ كُنتُمْ تَخْتانُونَ أَنفُسَكُمْ فَتَابَ عَلَيْكُمْ وَعَفَا عَنكُمْ فَالآنَ بَاشِرُوهُنَّ وَابْتَغُواْ مَا كَتَبَ اللّهُ لَكُمْ وَكُلُواْ وَاشْرَبُواْ حَتَّى يَتَبَيَّنَ لَكُمُ الْخَيْطُ الأَبْيَضُ مِنَ الْخَيْطِ الأَسْوَدِ مِنَ الْفَجْرِ ثُمَّ أَتِمُّواْ الصِّيَامَ إِلَى الَّليْلِ وَلاَ تُبَاشِرُوهُنَّ وَأَنتُمْ عَاكِفُونَ فِي الْمَسَاجِدِ تِلْكَ حُدُودُ اللّهِ فَلاَ تَقْرَبُوهَا كَذَلِكَ يُبَيِّنُ اللّهُ آيَاتِهِ لِلنَّاسِ لَعَلَّهُمْ يَتَّقُونَ

Allah says [in Surah alBaqara]: "It is made lawful for you to have sexual relations with your wives on the night of As-Saum (the fasts). They are Leebas (i.e. body cover, or screen, or Sakan, (i.e. you enjoy the pleasure of living with her - as in Verse 7:189) Tafsir At-Tabaree), for you and you are the same for them. Allah knows that you used to deceive yourselves, so He turned to you (accepted your repentance) and forgave you. So now have sexual relations with them and seek that which Allah has ordained for you (offspring), <u>and eat and drink until the white thread (light) of dawn appears to you distinct from the black thread (darkness of night)</u>, then complete your Saum (fast) till the nightfall. And do not have sexual relations with them (your wives) while you are in Itikaf (i.e. confining oneself in a mosque for prayers and invocations leaving the worldly activities) in the mosques. These are the limits (set) by Allah, so approach them not. Thus does Allah make clear His Ayat (proofs, evidences, lessons, signs, revelations, verses, laws, legal and illegal things, Allahs set limits, orders, etc.) to mankind that they may become Al-Muttaqoon (the pious)" (alQur'an 2:187).

The Sunnah explains this further:

'Adi bin Hatim narrated: "When the above verses were revealed: 'Until the white thread appears to you, distinct from the black thread,' I took two (hair) strings, one black and the other white, and kept them under my pillow and went on looking at them throughout the night but could not make anything out of it. So, the next morning I went to Allah's Apostle and told him the whole story. He explained to me, "That verse means the darkness of the night and the whiteness of the dawn." (alBukhari).

- **Sunnah qualifies the absolutes in the Qur'an.**
  The sunnah makes particular some Qur'anic verses that are general.

- **Sunnah comes to detail the commandments in the Qur'an.**
  Several components of prayer are mentioned in the Qur'an (observe salah on time, times of salah, recite what you know of the Qur'an, ruku', sujood) but the description of the way Prophet Muhammad (Peace Be Upon Him) prayed is necessary.

وَأَقِيمُواْ الصَّلاَةَ وَآتُواْ الزَّكَاةَ وَارْكَعُواْ مَعَ الرَّاكِعِينَ

"And perform As-Salat (Iqamat-as-Salat), and give Zakat, and Irka (i.e. bow down or submit yourselves with obedience to Allah) along with ArRakioon" (alQur'an 2:43).

Malik narrated: "We came to the Prophet and we were young men nearly of equal ages and we stayed with him for twenty nights. Allah's Apostle was a very kind man and when he realized our longing for our families, he asked us about those whom we had left behind. When we informed him, he said, "Go back to your families and stay with them and teach them (religion) and order them (to do good deeds). The Prophet mentioned things some of which I remembered and some I did not. Then he said, "<u>pray as you have seen me praying</u>, and when it is the time of prayer, one of you should pronounce the call (Adhan) for the prayer and the eldest of you should lead the prayer" (alBukhari).

- **Sunnah emphasizes some of the rules in the Qur'an**
- **Sunnah can establish new laws**
  - This does not make Prophet Muhammad (Peace Be Upon Him) an independent lawmaker.
  - This gives Prophet Muhammad (Peace Be Upon Him) permission to make ijtihad.
  - Not everything that the Prophet Muhammad (Peace Be Upon Him) did is considered a Shari'ah ruling. If he recommended (i.e. white clothing for men) or prohibited something, it is Shari'ah.
  - Example: The Prophet (Peace Be Upon Him) forbade the plucking of eyebrows, which is not found in the Qur'an:

'Abdullah reported that Allah had cursed those women who tattooed and who have themselves tattooed, those who pluck hair from their faces and those who make spaces between their teeth for beautification changing what God has created. This news reached a woman of the tribe of Asad who was called Umm Ya'qub and she used to recite the Holy Qur'an. She came to him and said: What is this news that has reached me from you that you curse those women who tattooed and those women who have themselves tattooed, the women who pluck hair from their faces and who make spaces between their teeth for beautification changing what God has created? Thereupon 'Abdullah said: Should I not curse one upon whom Allah's Messenger (may peace be upon him) has invoked curse and that is in the Book also. Thereupon that woman said: I read the Qur'an from cover to cover, but I did not find that in it. Whereupon he said: If you had read (thoroughly) you would have definitely found this in that (as) Allah, the Exalted and Glorious, has said:" What Allah's Messenger brings for you accept that. And what he has forbidden you, refrain from that." That woman said: I find this thing in your wife even now. Thereupon he said: Go and see her. She reported: I went to the wife of 'Abdullah but found nothing of this sort in her. She came back to him and said: I have not seen anything. Whereupon he said: Had there been anything like it in her, I would have never slept with her in the bed" (Muslim).

- **Without Sunnah, many rules of Shari'ah would be incomplete.**

❖ **<u>The authority of the Sunnah vis-à-vis the Qur'an</u>**

Three opinions:

1. **The Qur'an takes precedence over the Sunnah** (Imam Abu Haneefa)
2. **The Qur'an and Sunnah are considered equal in authority** (Imam ash-Shafi'ee and Imam ibn Hazm)

3. **The Sunnah takes precedence over the Qur'an** (The Qur'an needs the Sunnah more than the Sunnah needs the Qur'an). This was the opinion of Imam al-Awzai. He believed that since Sunnah explains the Qur'an, it takes precedence (this was not a popular opinion).

Faqeeh Says…

1. *Ijtihad is the reasoning process by which Islamic laws are deduced after thorough research. Take Ijtihad for now as the human reasoned decision, and Qiyas as one of the means of Ijtihad. I'll give you more details when we get to the chapter on Ijtihad and Taqleed.*
2. *Ijma is the unanimous agreement of the Sahabah or scholars in general on a point of Islamic law.*

❖ **Ijtihad**

1. **Did the Messenger of Allah (Peace Be Upon Him) use his ijtihad in the process of enactment of the law?**
   - Yes, the Messenger of Allah (Peace Be Upon Him) used his ijtihad but he was provided with guidelines (Wahi).

     Example (for worldly causes): In the battle of badr, the Prophet (Peace Be Upon Him) chose a place for the soldiers to camp. alHabaab ibn alMundhir asked whether he picked this location based on guidance from Allah or based on the Prophet's opinion and strategy. The Prophet answered that it was based on his opinion and strategy. alHabaab indicated that if that's the case, then he has a better location.

   - In matters of shari'ah, if he made a mistake, he would immediately be corrected.
     a. The blind man and the congregational prayer.

Abu Huraira reported: There came to the Apostle of Allah (Peace Be Upon Him) a blind man and said: Messenger of Allah, I have no one to guide me to the mosque. He, therefore, asked. Allah's Messenger (may peace be upon him) permission to say prayer in his house. He (tee Holy Prophet) granted him permission. Then when the man turned away he called him and said: Do you hear the call to prayer? He said: Yes. He (the Holy Prophet then) said: Respond to it" (Muslim).

b. How to deal with the captives of war

It has been narrated on the authority of 'Umar b. al-Khattab who said: When it was the day on which the Battle of Badr was fought, the Messenger of Allah (may peace be upon him) cast a glance at the infidels, and they were one thousand while his own Companions were three hundred and nineteen. The Holy Prophet (may peace be upon him) turned (his face) towards the Qibla Then he stretched his hands and began his supplication to his Lord:" O Allah, accomplish for me what Thou hast promised to me. O Allah, bring about what Thou hast promised to me. O Allah, if this small band of Muslims is destroyed. Thou will not be worshipped on this earth." He continued his supplication to his Lord, stretching his hands, facing the Qibla, until his mantle slipped down from his shoulders. So Abu Bakr came to him, picked up his mantle and put it on his shoulders. Then he embraced him from behind and said: Prophet of Allah, this prayer of yours to your Lord

will suffice you, and He will fulfill for you what He has promised you. So Allah, the Glorious and Exalted, revealed (the Qur'anic verse):" When ye appealed to your Lord for help, He responded to your call (saying): I will help you with one thousand angels coming in succession." So Allah helped him with angels. Abu Zumail said that the hadith was narrated to him by Ibn 'Abbas who said: While on that day a Muslim was chasing a disbeliever who was going ahead of him, he heard over him' the swishing of the whip and the voice of the rider saying: Go ahead, Haizi'm! He glanced at the polytheist who had (now) fallen down on his back. When he looked at him (carefully he found that) there was a scar on his nose and his face was torn as if it had been lashed with a whip, and had turned green with its poison. An Ansari came to the Messenger of Allah (may peace be upon him) and related this (event) to him. He said: You have told the truth. This was the help from the third heaven. The Muslims that day (i. e. the day of the Battle of badr) killed seventy persons and captured seventy. The Messenger of Allah (may peace be upon him) said to Abu Bakr and 'Umar (Allah be pleased with them): What is your opinion about these captives? Abu Bakr said: They are our kith and kin. I think you should release them after getting from them a ransom. This will be a source of strength to us against the infidels. It is quite possible that Allah may guide them to Islam. Then the Messenger of Allah (may peace be upon him) said: What is your opinion, Ibn Khattab? He said: Messenger of Allah. I do not hold the same opinion as Abu Bakr. I am of the opinion that you should hand them over to us so that we may cut off their heads. Hand over 'Aqil to 'Ali that he may cut off his head, and hand over such and such relative to me that I may but off his head. They are leaders of the disbelievers and veterans among them. The Messenger of Allah (may peace be upon him) approved the opinion of Abu Bakr and did not approve what I said. The next day when I came to the Messenger of Allah (may peace be upon him), I found that both he and Abu Bakr were sitting shedding tears. I said: Messenger of Allah, why are you and your Companion shedding tears? Tell me the reason. For I will weep at, if not, I will at least pretend to weep in sympathy with you. The Messenger of Allah (may peace be upon him) said: I weep for what has happened to your companions for taking ransom (from the prisoners). I was shown the torture to which they were subjected. It was brought to me as close as this tree. (He pointed to a tree close to him.) Then God revealed the verse:" It is not befitting for a prophet that he should take prisoners until the force of the disbelievers has been crushed..." to the end of the verse:" so eat ye the spoils of war, (it is) lawful and pure. So Allah made booty lawful for them" (Muslim).

c. Seeking forgiveness for hypocrites

Ibn 'Umar reported that when 'Abdullah b. Ubayy b. Salul died. His son 'Abdullah b. 'Abdullah (b. Ubayy) came to Allah's Messenger (may peace be upon him) and begged him that he should give him his shirt, which he would use as a coffin for his father, he gave him that. He then begged that he should conduct funeral prayer for him. Allah's Messenger (may peace be upon him) had hardly got up to observe the prayer for him that 'Umar stood up and caught hold of the garment of Allah's Messenger (may peace be upon him) and said: Allah's Messenger, are you going to conduct prayer for this man, whereas Allah has forbidden you to offer prayer for him? Thereupon Allah's Messenger (may peace be upon him) said: Allah has given me an option as He has said: "You may beg pardon for them or you may not beg pardon for them, and even if you beg pardon for them, seventy times", and I am going to make an addition to the seventy. He was a hypocrite and Allah's Messenger (may peace be upon him) offered prayer for him and Allah, the Exalted

and Glorious, revealed this verse:" Do not offer prayer for any one of them at all and do not stand upon their graves for (offering prayer over them)" (Muslim).

2. **The sanctioning of the Prophet's (Peace Be Upon Him) legislation**

إِنَّا أَنزَلْنَا إِلَيْكَ الْكِتَابَ بِالْحَقِّ لِتَحْكُمَ بَيْنَ النَّاسِ بِمَا أَرَاكَ اللّهُ وَلاَ تَكُن لِّلْخَآئِنِينَ خَصِيمًا

"Surely, We have sent down to you (O Muhammad SAW) the Book (this Qur'ân) in truth <u>that you might judge between men by that which Allâh has shown you</u> (i.e. has taught you through Divine Inspiration), so be not a pleader for the treacherous" (alQur'an 4:105).

3. **Examples of his Ijtihad and Qiyas**
   - Ijtihad is the general title of using human analytical and logical reasoning.
   - Qiyas is one of the means of Ijtihad. Qiyas extends the rule of an original case in the Qur'an or Sunnah to a present one. For example: Drugs and wine share the same effective cause of intoxication so the rule of prohibition of wine is extended to drugs.

   a. Making up days of fasting for a deceased person

Ibn 'Abbas (Allah be pleased with both of them) reported: A woman came to the Messenger of Allah (may peace be upon him) and said: My mother has died, and fasts of a month are due from her. Thereupon he said: Don't you see that if debt was due from her, would you not pay it? She said: Yes (I would pay on her behalf). Thereupon he said: "The debt of Allah deserves its payment more than (the payment of anyone else)" (Muslim).

   b. Permitting a fasting person to kiss his wife as he is allowed to rinse his mouth

Umar ibn alKattab said: "I slipped and kissed (my wife) while fasting. So I came to the Prophet (Peace Be Upon Him) and said: I have committed a grave matter today. The Prophet asked: "And what is it?" I replied: "I kissed (my wife) while fasting". The Prophet said: "What if you rinse your mouth with water?" I said: "There is no harm in that?" The Prophet said: "What has (harm in it) then?" (ibn Hajar)

It's like rinsing your mouth, so it doesn't break your fast. But it might lead to that, the same way if you who rinse your mouth in the summer and drink water by mistake.

4. **Ijtihad of the Sahabah**

The sahabah were allowed to use ijtihad.

'Amr bin Al-'As narrated: That he heard Allah's Apostle saying, "If a judge gives a verdict according to the best of his knowledge and his verdict is correct (i.e. agrees with Allah and His Apostle's verdict) he will receive a double reward, and if he gives a verdict according to the best of his knowledge and his verdict is wrong, (i.e. against that of Allah and His Apostle) even then he will get a reward" (alBukhari).

- When Ali ibn Abi-Talib was in Yemen, the people from the village dug a hole to catch a dangerous lion. When the lion got trapped inside, everyone flocked there to witness this momentous event. In the process, one person accidentally got pushed in the hole. He pulled another one with him, who pulled another one who pulled another one. 4 people died. The people of the village came to Ali to seek his ruling regarding the ransom due to the families of the deceased. Ali used his ijtihad to conclude that the family of the first gets 25% of a normal ransom (he caused the accidental death of 3 more). The second's gets 33% (he caused the accidental death of 2 more), the third's gets 50% (he caused the accidental death of 1 more), and the fourth's gets 100%.

Was there an authority for the Ijma' at the time of the Messenger of Allah (Peace Be Upon Him)?

- Ijma of the sahabah was nonexistent during the time of the Messenger of Allah (Peace Be Upon Him) because he was there.

❖ The Basis of Legislation in the Sunnah

- **Establishing the codes of the law**
  - Ijtihad, Qiyas, etc. were established during the time of the Prophet (Peace Be Upon Him) but they were not referred to using this terminology.
  - The Prophet Muhammad (Peace Be Upon Him) was allowed to make ijtihad, thereby teaching us the proper way to do so. The Prophet (Peace Be Upon Him) was corrected by Allah whenever he made a mistake while during our time this is not the case.
- **Leaving Ijtihad allowable**
  The Sahabah were allowed to make ijtihad:

Ibn Umar narrated: "On the day of Al-Ahzab (i.e. Clans) the Prophet said, "None of you Muslims) should offer the 'asr prayer but at Banu Quraiza's place." The 'asr prayer became due for some of them on the way. Some of those said, "We will not offer it till we reach it, the place of Banu Quraiza," while some others said, "No, we will pray at this spot, for the Prophet did not mean that for us." Later on it was mentioned to the Prophet and he did not berate any of the two groups" (alBukhari).

The Prophet (Peace Be Upon Him) approved both groups on their Ijtihad.

- **Implementation of the laws of the Qur'an**
  The laws of the Qur'an are explained by the Sunnah.

Prominent Jurists & Characeteristics of this Stage

❖ **Prominent Jurists of this Period**

1. **Abu Bakr**
2. **‘Umar**
3. **‘Uthman**
4. **‘Ali**
5. **Abdullah ibn Mas’ood**
6. **Zayd bin Thabit**
7. **Mu’aadh bin Jabal**

❖ **Characteristics of Fiqh in this Period**

1. **This stage marked the beginning of the evolution of fiqh.**
2. **Islamic law was still in its primary stages.**
   - Only consisted of the sources of Shari’ah (raw materials: Qur’an and Sunnah).
   - Terminologies were not introduced at this time (mustahab, makrooh, etc).
3. **Marked the foundation of the first Madhab- the Madhab the Prophet (Peace Be Upon Him)**
   - Prophet Muhammad (Peace Be Upon Him) trained the Sahabah.
4. **Fiqh was not yet defined as an independent science.**
   - Only the literal meaning was used.

Stage 2

Era of the Righteous Khulafa'

Establishment of the Law (11H-40H/ 632CE-661CE)

"أي سماء تظلني أم أي أرض تقلني إذا قلت في كتاب الله بما لا أعلم."

أبو بكر الصديق رضي الله عنه

"What sky will shade me and what earth will carry me if I say in the Book of Allah something without knowledge." – Abu Bakr

This era lasted from the Selection of Abu Bakr to the assassination of Ali (May Allah be Pleased With Them). (Some say it was till Hassan bin Ali conceded rule to Muawiyah two years later.)

Geographical and Political Preview



I. Abu Bakr's Rule (632H – 634H)

- When the Muhammad (Peace Be Upon Him) died, only the Arabian peninsula was under the control of the Muslims
- Many people apostatized at this time. There was great fitnah, and threat of division.
- Historians say only 3 cities remained on Islam - Makkah, Madinah, Taif
- Abu Bakr launched the mission to fight against them (Riddah Wars)
- Peace was restored to the state by Abu Bakr, and then he died.
- There was no significant expansion during Abu Bakr's time.
- Some scholars say that Allah protected this ummah by two people: Abu Bakr after the death of the Muhammad (Peace Be Upon Him) and Imam Ahmad ibn Hanbal during the time of the Mu'tazilah threat.

II. Umar's Rule (634H – 644H)

- Major expansions; Egypt, Iraq, Palestine and Iran brought under Muslim rule.
- Umar centralized the government to handle such rapid expansion
- "If a mule tripped in Iraq, I am scared Allah will ask me why I didn't fix the road."
- Umar's constant communication with places like ash-Shaam and Iraq gave rise to the unprecedented one-day mail system (horse express).

- Muslims managed to defeat the Persian Empire in a battle that lasted 3 continuous days and nights.
- When the Muslims entered Persian new questions came into Fiqh because of the new people, traditions, and customs; many unprecedented questions had to be dealt with.
- The same thing happened in ash-Sham
- Most leadership positions remained in the hands of the major sahaabah
  - Salman al Farsi: Ameer of Persia
  - Amr ibn Aas: Egypt
  - Muawiyyah ibn Abu Sufyan: Ash-Shaam
- 'Umar was assassinated by a Persian (Abu Lu'lu' Al-Majusi) who was brought to Medinah, and was a slave of ibn Umar. Abu Lu'lu' held a grudge against Umar because of the conquest. He stayed in Medinah sharpening his knife for a month, and bathed it with poison, waiting for an opportunity to kill Umar. Umar was stabbed between 6-13 times as he led the Fajr salah. As Abu Lu'lu' was leaving, he kept stabbing people, who also died. A cloth was thrown over him, and then he stabbed himself when he was surrounded, and he realized he couldn't escape.
- Umar stayed alive for 3 days, and selected 6 people -all guaranteed Jannah by Muhammad (Peace Be Upon Him) - to choose a leader from amongst themselves. The council of six consisted of: Uthman ibn Affan, Ali ibn Abi Talib, Az-Zubayr ibn al-Awwam, Talha ibn Ubayd Allah, Abd ar-Rahman ibn Awf, and Sa'd ibn Abi Waqqas, with Abdullah ibn Umar to oversee them. Uthman is eventually picked as Khalifah, with the support of each of the others.

III. Uthman's Rule (644H – 656H)

- Uthman's job was to bring order back to the state; it wasn't about expansion but establishing the society. Iraq, Egypt and Syria getting solidified as part of state.
- Some of the young people (had early hints of Khawaariji thinking) from these new areas came and accused Uthman of favoring his own people. They wanted to take the state of affairs into their own hands, so they gathered around his house, and killed him.

IV. Ali's Rule (656H – 661H)

- Ali was appointed by the people of Madinah, and his leadership was not by ijmaa' of the sahabah. Others in ash-Sham wanted to seek revenge for the murder of Uthman first. Uthman's murder and the events surrounding it were a symptom and also became a cause of civil strife on a large scale.
  - Ali vs. 'Aisha, Talha, and Zubayr
    - Aisha thought first the assassins of Uthman should be brought to justice and then governors dismissed and new ones installed.
    - Ali wanted to look after the state first
  - Ali vs. Mu'awiyyah and Amr ibn Al 'As
    - Mu'awiyyah (gov of Syria) refused saying first bring Uthman's murderers to justice.
    - Ali moved the capital to Iraq. Mu'awiyah openly rebelled. Battle inconclusive. Ali accepts de facto rule of Muawiyyah over Syria.
      - This gave rise to the Khawaarij (they didn't like Ali's acceptance of Mu'awiyyah) Said none are legitimate rulers. Set out to kill Ali, Muawiyyah and Amr ibn al 'As. Amr ibn al-As was sick so he didn't make it to fajr; Mu'awiyya fought off his attacker, but Ali was killed while performing Fajr salah.
      - Incident of Arbitration lead to the rise of the first two sects in Islam, the Khawaarij and then the Shi'a.

Definition of Sahabah: any man or woman who lived during the time of the Prophet (sws) and embraced Islam and saw and recognized the Prophet (sws) at least once in his lifetime, and then died on Islam. That is, there was no apostasy in the middle.

Mukhaddaram are those who lived during time of Prophet but did not see/meet him.

Interestingly, 100,000 people were present at Arafah and witnessed Muhammad's (peace be upon him) last sermon, so they would have been sahabah; however, many of them apostatedized after Rasool (s) died, and so the Sahabah went down to a few thousand. *Hayat-us-Sahabah* – has only a few thousand sahabah.

Faqeeh Says…

The Sahabah fall into different categories in respect to different aspects of classifications like their knowledge, closeness to the Prophet (saw), memorization of the Qur'an, age etc. – just to name a few. However, according to the Madhab of Ahl as-Sunnah wal-Jama'ah they are all reliable and trustworthy.

Ranks of the Sahabah

The Sahabah are not all of one level.

1. **The four khulafaa'** – Abu Bakr, 'Umar, Uthman, 'Ali (ra)
2. **The major Sahabah** – (the older group) Abdullah ibn Mas'ud, Abd ar-Rahman ibn Awf, etc. (ra)
3. **The young Sahabah** – (lived long enough to relate Islam to a later time) Abdullah in Umar, Abdullah ibn Abbas, Abdullah ibn Zubayr, Aisha, Abu Sayid Al-Khudri, etc. (ra)
4. **Scholars from among the Sahabah** – Abdullah Ibn Abbas, Abdullah ibn Masoud, Aisha, Abu Hurayra, Muadh ibn Jabal, Zayd ibn Thabit, Ali bin Abi Talib, etc.
    - among them were regular people (farmers, carpenters, etc.) who had acquired scholarship

Major Events of the Period

1. **Compilation and Distribution of the Quran**
    - At the time of Abu Bakr many huffadh were killed in battle of Yamamah fighting against the apostates. Umar convinced Abu Bakr to have the Quran compiled.
    - Zayd ibn Thabit was assigned this noble task.
    - This volume stayed with Abu Bakr until his death (May Allah be Pleased With Him), then given to Umar, then to Hafsa, then Uthmaan (who handled the issue of different Qiraat) and he made 4 major copies which followed one calligraphy (according to the dialect of the Quraish now known as Uthmani script).
    - 4 copies were sent to major cities within the state: Makkah, Kufa, Basra, and Egypt (or ash-Shaam). The master copy stayed in Madinah.
    - All other copies were ordered to be destroyed, and Muslims were only to make copies from these 4.
2. **The Expansion of the State –** demanded new fiqh
    - Due to the rapid expansion to far-reaching territories, the sahabah encountered many new ethnic and cultural issues and unprecedented events.
    - A need for new fiqh arose.
    - Similar to today. Ex. business – ebay, paypal, buying gold at auctions, inter-racial marriages.

3. The Two Fitnahs

- The first fitnah ('turmoil') occurred during the rule of Abu Bakr (apostasy). It was quickly stopped and diffused; died right then and there.
- The major turmoil happened with the assassination of Uthman. This created the conflicts between the Sahabah (see **Ali's Rule** above) and it had long lasting repercussions, lasting to the present-day.
- Rise of Khawaarij, the Shi'a, and later, other sects

Methodology of the Sahabah

- Procedure of the Righteous Khulafa' in Problem Solving

1. **Adherence to the Qur'an and Sunnah**
   Abu Bakr clearly gave statements that he would seek answers in Qur'an and then would ask Sahabah if they heard anything about Prophet (saw) about this.

2. **Avoiding excessive narration of the Hadeeth**
   Umar would beat them up for doing this. He wanted them to learn the Qur'an first and not mix it up with the Hadeeth. They wanted the focus to be on Qur'an.

3. **General reluctance of individual Sahabah to give fatwa**
   - Sometimes one sahabi would receive a question, he would push the person to someone else and sometimes it would come back to the first sahabi.
   - They were reluctant to give fatwas because they were afraid of the responsibility.
   - Sheikh's advice: You don't have to give fatwas, refer the people to someone who is knowledgeable. Learn to say "I don't know" (and don't say "I don't know- but…")
   - Don't be too extreme though, if someone asks you about something like wudu', don't say Allahu Aa'lem

4. **The Independence of their Ijtihaad**
   - They would disagree on issues but no sahabi forced their opinion on the other.
     - Aisha heard Abdullah ibn Umar said after ghusl from sexual relations women have to take out their braids and wash hair, but Aisha said no, just throw 3 handfuls of water over head. Only after menstruation they have to undo their braids.

- The Approach of the Sahabah to Ijtihad

"I'm giving my opinion about her. If it is correct then it is from Allah, but if it is incorrect, then it is from me and the Shaytan." [Ibn Mas'ud (May Allah be Pleased With Him)]

- Gave their own opinions and judgments, and never said "This is the correct and only opinion." Rather they said, "This is my opinion."
- A lot of people take their one madhab as Allah's rule.
  - Allow for a margin of error in any opinion so as not to create any factionalism.

How did the Sahaabah apply their individual capacity to arrive at an opinion by making their personal Ijtihad?

- They would try to make it clear that it was their own personal Ijtihad
- If not, if it was in the Qur’an
- If not, if it was in the Sunnah
- If neither then the Khalifah would call a meeting of the Sahaba, and they would be asked about the issue. The khalifah would pick one he agreed with, and adopt it as state law.
  - Umar was concerned about fatwa so much so that he would not allow the sahabaahto leave Madinah without his permission, because he needed their assistance and consultation.
- Abdullah ibn Mas'ud one time had an issue on inheritance. Abu Musa al-Ash'ari was asked and he gave his opinion and then he said that if you want, go ask Abdullah ibn Mas'ud – they went to ibn Mas'ud who said if I give the answer that I just heard from you it means that I would be lying about Allah and his Messenger. They then went back to Abu Musa al-Ash'ari, who said, as long as there is this great scholar among you (Ibn Mas'ud), don’t ask me.

Sources of Legislation in this Period

1. **Qur'an**

2. **Sunnah**
   Umar would not accept narrations from just anyone. For example Abu Musa went, knocked on door of Umar 3 times and left, Umar caught him and said why did you do this, and Abu Musa said Prophet taught us this. He said bring me someone to confirm this or I will beat you.

3. **Ijma’**
   Not just of anyone though, it was of the major sahabah, it was the oldest and earliest Muslims. Umar though used to bring Abdullah ibn Abbas even though he is young. Some older sahabah were offended by this and said why don’t we bring our kids. Umar asked about the interpretation of surah Nasr. Others said was of victory of the Muslims, but Abdullah ibn Abbas said it was the announcement of the death of Muhammad (Peace Be Upon Him) and they were astonished by his knowledge.

4. **Ijtihad**

5. **Ra’i or Qiyas**
   Umar was one of first to do this extensively, e.g Abu Bakr used to give equal allowance to everyone, but Umar said that we should give proportional to how early they accepted Islam- the earlier they accepted Islam, the more they received.

Prominent Fuqaha’ of this Stage

- **‘Umar ibn Khattab**
  - The Prophet saw in a dream ‘Umar dragging his clothes, symbolized his knowledge compared to that of the rest of the sahabah.
  - The Prophet in a dream gave milk to ‘Umar, symbolized his Deen (faith)
  - ‘Umar organized the state
    - He established the court system; brought in experts to help build the state up.
  - He left 540 hadeeth; found in books of hadeeth
    - 26 in Bukhari & Muslim; 34 in Bukhari

- **Zayd ibn Thabit**
  - He was the head if both Qur'an committees: in the time of Abu Bakr, and in the time of Uthman.
  - He was only 11 when Muhammad (Peace Be Upon Him) came to Medina
  - The Prophet told him to learn the language of the Jews (Arabic and Aramaic), and he did in 15-17 days
  - He became the official scribe and translator for the Prophet
  - Became the authority in matters of inheritance, and judicial law
  - Died in the 45th hijri year, during the time of Mu'awiyyah

- **'Abdullah ibn Mas'ud**
  - Some consider him the 4th person to embrace Islam
  - He was the first man to recite the Qur'an publicly
  - He was short and skinny
  - His legs were thin and the Sahabah were once laughing at them. Muhammad (Peace Be Upon Him) said those legs will weigh more than the mountain of Uhud on the Day of Judgment.
  - He was so close to the Prophet, just like being his servant
  - He went to Iraq and became the Faqeeh of Iraq; Founder of the Iraqi school
  - Died during the Khalifah of 'Uthman, in the 32th Hijri year

Characteristics of Fiqh in this stage

1. **Absence of factionalism.**
   Sahabah agreed on the principle of unity, and tolerated their differences.

2. **Realism of fiqh.**
   They answered real questions based on real situations, and not hypothetical ones (this didn't start until the time of the Umayyads).
   - People would come from far and ask a "what-if" question. Abdullah ibn Umar would say: Do you see that star in the sky? Put the "what-if" over there and then if it happens bring it back to me.

3. **Easiness of arriving at a unanimous agreement.**
   - Number of fuqaha (major Sahabah) was limited
   - Most of Sahabah that were authorites of fiqh were confined to the same area, in Madinah mostly.

Stage 3

Era of the Young Sahabah and the Tabi'een
Narration of the Hadeeth (41H-132H/ 662CE-753CE)

This era began with the assassination of 'Ali ibn Abi Talib by the Khawarij. Hassan, the son of 'Ali, was put into power afterwards. He then conceded to Mu'awiyah. Afterwards there was peace and the 'ulema' started a new age of knowledge. This is called the generation of the hadeeth.

"لم يكونوا يسألون عن الإسناد فلما وقعت الفتنة قال سموا لنا رجالكم. فينظر إلى أهل السنة فيؤخذ حديثهم وينظر إلى أهل البدع فلا يؤخذ حديثهم."

محمد بن سيرين رحمـــه الله

"They never asked about Isnad (chain of hadeeth narrators) until the fitnah occurred. Only then did they start asking. "Reveal to us the names of your narrators." They look for Ahl as-Sunnah and accept their hadeeth, and look for Ahl al-Bid'ah and reject theirs." (Ibn Sireen)

The fitnah…
When Uthman was assassinated, the people had very different opinions as to how to solve the dilemma they now faced. 'Ali wanted to establish the Khilafah first and then avenge Uthman's death. Mu'awiyah, 'Amr ibn al-'Aas, Talhah and az-Zubayr ibn al-Awwam were from Banu Umayyad, the tribe of Uthman, so they thought it was most important to first avenge Uthman's death. A'isha wanted to get revenge as well. With the exception of Mu'awiyah, all the others decided to go to Iraq to go after the murderers of Uthman. When 'Ali heard the news, he went to Iraq to stop them. He intercepted them at a location close to Iraq where both sides agreed to first establish the Khilafah and then go after the murderers of Uthman. Though a treaty had been made, the people of Fitnah infiltrated both the armies of A'isha and 'Ali at night and killed people from both camps. The armies saw this as a breach of treaty from the other side and combat took place.

They then engaged in the "Battle of al-Jamal (the Camel)" because the camel of A'isha represented the flag of the battle. If the camel fell, then A'isha's army had fallen. A'isha's army was eventually defeated. 'Ali then sent A'isha with some of his men back to Madinah. After this, she took herself out of the politics of the Ummah.

'Ali then went to Syria where he meet the army of Mu'awiyah and engaged in the "Battle of Siffin". The Syrians wanted to negotiate so a peace treaty was made between 'Ali and Mu'awiyah even though no agreement was reached. Dissension broke out in the army of 'Ali since some of 'Ali's supporters, who at first did not want to fight in the battle, now did not want to have peace. Thus, 10,000 men removed themselves from the army of 'Ali and went to an area called Haruraa. They were later to be known as the Khawarij. They developed radical views. They called 'Ali, Mu'awiyah, 'Amr ibn al-'Aas and Abu Musa al Ash'ari kuffar. Outwardly, these men looked very pious and more righteous than even the Sahabah. The Prophet predicted their coming in the following hadeeth:

Narrated Abu Sa'eed Al-Khudri: "…Then the Prophet looked at him (i.e. that man) while the latter was going away and said, "From the offspring of this man there will come out (people) who will recite the Qur'an continuously and elegantly but it will not exceed their throats. (They will neither understand it nor act upon it). They would go out of the religion (i.e. islam) as an arrow goes through a game's body." I think he also said, "If I should be present at their time I would kill them as the nation of Thamud was killed"" (alBukhari).

RasulAllah sal Allahu alayhi wa Sallam called the Khawarij "kilaabun naar- Dogs of the fire"
'Ali sent his cousin 'Abdullah ibn 'Abbas to negotiate and have intellectual debates with the Khawarij (i.e those who removed themselves from the army). 6000 men from amongst the Khawarij came back with 'Abdullah ibn 'Abbas. It was the remaining 4000 that started to propagate the views of the Khawarij.

The Sahabah did not consider the Khawarij as kuffar, but as Bugha or Ahlul-Baghi (transgressors). Therefore, the Sahabah decided to leave the Khawarij alone until they directly attacked the Sahabah. When the Khawarij killed the son of Khabbab ibn Arat and his pregnant wife, the Sahabah went to battle against them. 'Ali's army almost completely exterminated the Khawarij in An-Nahrawan (Battle of Nahrawan) but a few escaped and fled to the East. The Prophet (Peace Be Upon Him) predicted that 'Ali would fight the Khawarij. He gave a description of a man that would be killed in the battle—a man with one hand whose flesh would hang down like a breast. After the battle, 'Ali sent the people to find this man. When the man was eventually found, 'Ali RadiAllahu Anhu said: ***"Allahu akbar, sadaqa Rasulullah"*** and was relieved because it affirmed he was fighting the right people.

Narrated Abu Sa'eed Al-Khudri: "While the Prophet was distributing (war booty etc.) one day, Dhul Khawaisira, a man from the tribe of Bani Tamim, said, "O Allah's Apostle! Act justly." The Prophet said, "Woe to you! Who else would act justly if I did not act justly?" 'Umar said (to the Prophet), "Allow me to chop his neck off." The Prophet said, "No, for he has companions (who are apparently so pious that) if anyone of (you compares his prayer with) their prayer, he will consider his prayer inferior to theirs, and similarly his fasting inferior to theirs, but they will desert Islam (go out of religion) as an arrow goes through the victim's body (games etc.) in which case if its Nasl is examined nothing will be seen thereon, and if its Nady is examined, nothing will be seen thereon, and if its Qudhadh is examined, nothing will be seen thereon, for the arrow has gone out too fast even for the excretions and blood to smear over it. Such people will come out at the time of difference among the (Muslim) people and the sign by which they will be recognized, will be a man whose one of the two hands will look like the breast of a woman or a lump of flesh moving loosely." Abu Sa'eed added, "I testify that I heard that from the Prophet and also testify that I was with 'Ali when 'Ali fought against those people. The man described by the Prophet was searched for amongst the killed, and was found, and he was exactly as the Prophet had described him" (alBukhari).

The remaining Khawarij then isolated themselves and created their own ideology, their own fiqh. They believed that destroying the political leadership would resolve the problems they saw. So they made a vow to assassinate 'Ali, Mu'awiyah, and 'Amr ibn al-'Aas. One assassin went to Iraq to kill 'Ali. Another went to Sham (Damascus) to kill Mu'awiyah. And a third went to Egypt to kill 'Amr ibn al-'Aas. 'Abdur Rahman ibn Muljim managed to kill 'Ali in Kufa, Iraq while the latter was leading Salatul Fajr. Mu'awiyah was injured in Damascus and 'Amr's deputy was killed instead of him since 'Amr was not feeling well and so he sent his deputy to lead Salatul Fajr for him.

Hassan took over after the death of his father ‘Ali. The Prophet predicted this and made du’aa for Hassan to unite the two factions of the Muslims. Hassan then later conceded to Mu’awiyah for the sake of unity. This year became known as the Year of Jama’ah (Community). By conceding to Mu’awiyah, Hassan fulfilled the prophecy of the Prophet. Mu’awiyah came into power and hence the Umayyad dynasty was established.

Narrated Abu Bakr (may Allah be pleased with him): “I heard The Prophet (Peace Be Upon Him) talking at the pulpit while Al-Hasan (may Allah be pleased with him) was sitting beside him and he (i.e. The Prophet (Peace Be Upon Him)) was once looking at the people and at another time Al-Hasan (may Allah be pleased with him), and saying, "This son of mine is a Sayyid (i.e. chief) and perhaps Allah will bring about an agreement between two sects of Muslims through him"” (alBukhari).

Geographical and Political Preview: The Umayyad Dynasty



Mu‘awiyah was the governor of Sham during the Khilafah of ‘Umar. So the people of Sham loved him and he loved them. Thus, when he became Khalifah, he moved the Islamic state from Kufa, Iraq to Damascus, Syria. Sham was a point of trade because of its close proximity to the Roman Empire so it became like a cultural center. Mu’awiyah continued to try to make peace between the Muslims but the Khawarij continued to think of ways to revolt against the khalifah and the Shi’a emerged in Iraq.

During the rule of Mu’awiyah, a monarch system was first suggested. This was not received well by the Muslim public. While Mu’awiyah was getting weaker, he consulted people who adviced him to give the khilafah to his son, Yazid. Many of the Sahabah were forced to give bai’ah (allegiance) to Yazid. Some of them procrastinated their bai’ah while others escaped so they would not be forced to give bai’ah. ‘Abdullah ibn Zubayr escaped to Makkah. Hussain (the son of ‘Ali) went to Makkah and joined ‘Abdullah ibn Zubayr. They declared war against Yazid under the claim that the people did not approve of him.

The people of Iraq then invited Hussain to join them saying that they will support him as they supported his father (‘Ali) and brother (Hassan). ‘Abdullah ibn ‘Umar advised Hussain not to go to these people for they betrayed ‘Ali, and would betray him (Hussain) as well. Nevertheless, Hussain left for Iraq. Yazid learned about Hussain’s migration to Iraq and sent an army to fight against him. Hussain was killed in this battle (Battle of Karbala). He did not receive the help from the Iraqis as he was promised thus, the same people who had offered their help to Hussain aided in murdering him by not supporting him when the time arrived.

Marwan ibn Hakm took over the dynasty after Yazid’s death. He is considered the true founder of the Umayyad dynasty. After Marwan, all the leaders of the Umayyad dynasty consisted of his sons and grandsons with the exception of ‘Umar ibn ‘Abdul ‘Aziz.

‘Abdullah ibn Zubayr was defeated by Al-Hajjaj, a ruthless man, during the khilafah of ‘Abdul Malik ibn Marwan. During the battle, Al-Hajjaj, besieged Makkah and sent catapults towards the Ka’bah. He did not fear destroying the Ka’bah. Hence, there is much animosity against the corrupt and ruthless rule of the Umayyads. The Umayyads only ruled for about 90-91 years and then their dynasty collapsed.

The Umayyad dynasty collapsed when the Abbasids (also descendents of the Prophet) began allying with the Muslims from the East (the non-Arabs). The Umayyads and the Abbasids fought at a river between Iran and Iraq and the Umayyad dynasty was hence eliminated from the East. However, some of the Umayyads escaped to North Africa and then Spain. In Spain, they were able to re-establish the Umayyad dynasty for another 300 years.

‘Abdur Rahman ibn Hisham ad-Dhaakil was the founder of the Umayyad dynasty in Spain. In order to escape from the Abbasids in Syria, he jumped into the Euphrates and swam until he reached the opposite shore. His brother, who was with him, became tired in the middle of the swim and decided to return to the shore, against the pleas of ‘Abdur Rahman. Thus ‘Abdur Rahman ibn Hisham ad-Dhaakil saw his own brother killed before his eyes by the Abbasids who were saying that they would not harm the brothers. When ‘Abdur Rahman eventually reached Al-Andalus, he was able to gain supporters and re-establish the Umayyad dynasty in Spain.

Era of the Young Sahabah and the Tabi’een

Narration of the Hadeeth (451H-132H/662CE-753CE)

➔ Characteristics of the Stage

1. **Geographical expansion**
   During the time of the Umayyads, the Islamic empire saw great geographical expansion. Muslims went to Asia, Europe, and North Africa. Fiqh an-Nawazil (the Fiqh of unprecedented events) was more prevalent because of the expansion to different people and different areas.

2. **Establishment of new urban areas**
   Cities such as Basra, Kufa, Jerusalem and Al-Andalus were established and many towns were also built in Egypt. The Umayyads were given special prestige in Jerusalem. Under the rule of Sulayman ibn ‘Abdul Malik, the Umayyads built the Dome of the Rock.

3. **Political turmoil**
   - Many of the Fuqaha’ disassociated themselves from this regime and fled from the center of the state. One such Faqeeh was Sufyan at-Thawree. He was given a letter to become a supreme judge but he ran away and threw the letter in the river.
   - The Ummayyad wanted the support of the scholars, the clergy, the imams, so they tried to coerce them through marriage or promotions to high positions, etc.
   - Sectarian riots began taking place due to the emergence of many sects such as the Shi’a and the Khawarij.

➔ Factors affecting Fiqh

1. **Division of the Ummah**

- There were three major parties of the Ummah
    - Ahl as-Sunnah wal-Jama'ah
    - Ash- Shi'a
    - Al-Khawarij
- Both the Shi'a and the Khawarij emerged in Iraq and remained there mostly.

2. **General turbulence in the arena of knowledge**
    - The Fuqaha' did not want to be affiliated with any of these groups so they became very independent
    - Therefore Ijma' became unreliable and impossible. People started to reject Ijma' because they did not know whether all the Fuqaha' agreed upon a particular issue.

3. **Dispersion of the Muslim Scholars**
   Muslim scholars began escaping from the center of the state to be free from any influence due to factionalism. This increased the difficulty of Ijma' and also explains why the Fuqaha' went all the way to Al-Andalus. In a positive light, this aided the development of Fiqh because the Fuqaha' were now independent of political influences from the state.

4. **Establishment of the first Madhahib**
    - Ahl al-Hijaz
    - Ahl al-Iraq

   Therefore Fiqh became separated into the Literal (Ahl al-Hijaz) and Analytical (Ahl al-Iraq) methods.

5. **Popularity of the narration of Hadeeth**
   The need to understand and preserve the Sunnah of the Prophet (Peace Be Upon Him) became vital now since the Qur'an had been committed to memory. The science of hadeeth along with the issue of the chain of narrators started to be developed.

6. **Appearance of the phenomenon of fabrication**
   Hadeeth became a business due to the popularity and high demand for it. Some people would fabricate Hadeeth to give hope to people during the time of fitna (e.g. read this Surah for poverty, etc.). Others would use fabricated ahadeeth to promote their own selfish desires for example the seller of carrots created hadeeth such as "…eating carrots strengthens the sight." In turn the demand for carrots would increase immensely and they would gain the profit for fabricating this hadeeth. In addition, some had sectarian interests so they fabricated hadeeth to gain support while others just wanted to create corruption.
7. **The massive conversion of the non-Arabs**
   At first, the majority of the Muslims were Arabs. Now non-Arabs began converting to Islam. Within a short period, the non-Arabs become the majority and produced many scholars. The Umayyads wanted to keep power within the tribe of Quraish (i.e in the hands of the Arabs) because of the Hadeeth of RasulAllah sal Allahu alayhi wa Sallam in which he says that leadership should remain in the hands of the Quraish. Therefore, the political power was not shared and this created divisions and ultimately led to the collapse of the Umayyads. The Abbasids, used the non-Arabs to help them gain power and overthrow the Umayyads.
   There were many Muslim scholars of non-Arab descent at this time and they were the majority who served the deen after the time of RasulAllah sal Allahu alayhi wa Sallam and the Sahabah. The issue is not about being Arab but about being righteous, knowledgeable and serving the deen.

➔ The First Two Sects in the History of Islam (Their effect on Fiqh)

1. **al-Khawarij (The Kharijites)**
   This was the first sect to appear and it appeared during the fitnah at Siffin after the army of Mu'awiyah raised their musaahaf and called for peace. After that, the Khawarij isolated themselves and started to fight to propagate their ideology and 'spread peace'. Today, the Khawarij is more of an ideology than an actual group or political party.

2. **ash-Shi'a (The Shiites)**
   They are named after the Arabic word for supporters. They originally started out as a group of emotional supporters of 'Ali. Since 'Ali was the cousin and son-in-law of the Prophet (Peace Be Upon Him), the Shi'a considered him to be only legitimate khalifah. Eventually they adopted some extreme views from the Persians and began developing their own ideology which gradually shifted away from mainstream Islam. They are an emotional sect. They are still very emotional about 'Ali and Hussain since they feel that they are responsible for the murders of 'Ali and Hussain. 'Ali punished them by using fire and ironically they were happy with 'Ali's punishment since they considered him to be partly divine. However, 'Ali should not have done that because RasulAllah sal Allahu alayhi wa Sallam said that no one should punish by the fire except the Lord of the fire.

➔ The 'Aqeedah and Fiqh(Part 1)

Are Fiqh and 'Aqeedah associated?

- The first investigation of 'aqeedah aroused from the fuqaha' of hadeeth. When they received a hadeeth they would question the hadeeth: where did you get it from? Who did you get it from? They would not take their Fiqh from people with corrupt 'aqeedah. At that time, there were many fabricated ahadeeth, so they had to sift through the ahadeeth.

- Ahl as-Sunnah wal Jama'ah were the mainstream. Everyone considered the Khawarij and Shi'a to be deviations from mainstream Islam. Each of these groups started to develop their own Fiqh and understanding.

- The Shi'a developed the concept of divine leadership. They believe in al-Imaamah and that the descendants of the Prophet (Peace Be Upon Him) are infallible. Most of the Fiqh of the Ithna Ashariah come from Jafaar as-Saadiq, one their twelve infallible imams. Ahl as-Sunnah wal-Jama'ah consider the imams of the Shi'a to be scholars. The Shi'a believe in Taqeeyah—a form of deceit in order to hide their true beliefs and prevent themselves from being persecuted. They also developed many fabricated ahadeeth because of their emotions, for example they believe that when the donkey of RasulAllah sal Allahu alayhi wa Sallam heard of The Prophet's (Peace Be Upon Him) death, he became depressed so he bit on the rope that was tying him to a tree until he freed himself, then he went to a river and drowned himself (i.e committed suicide).

- The Shi'a use Al-Kaafi by Al Kulayni. This is like Bukhari to the Shi'a. They do not accept many of the hadeeth of the Prophet because they claimed that many of the Sahabah were kuffar. They have disregarded the Sunnah and thus eliminated one source of Fiqh because they claim that there is no need for the Sunnah when there are infallible imams.

- The khawarij use Qur'an and Sunnah but they interpret them differently.
- The Fiqh of Ahl as-Sunnah prevailed and remained intact because it was the strongest group (i.e the ideology of the Shi'a and Khawarij were weak).

Faqeeh Says…

Did you know that the Messenger of Allah said, "The Jews were divided among themselves into seventy one or seventy two sects, and the Christians were divided amongst themselves into seventy one or seventy two sects. And my Ummah will be divided among itself into seventy three sects." [Abu Dawood, at-Tirmidhi, al-Hakim, and Ahmad among several others]

However not all the sects that appeared in the history of Islam left a significant legacy in areas of Fiqh except for a few like Shi'aa and Khawarij.

Age of the Primary Madhahib

The Seeds of Differences

Ahl as-Sunnah had the same ideological beliefs; however differences started to appear in the methodology of approaching the Qur'an and Sunnah. Thus, there were juristic differences which eventually led to the emergence of two primary madhahib.

➔ The First Madhab: Hijazi School (Ahl al-Hijaz)

Madhab of Alh al-Hadeeth

They were also called Ahl al-Hadeeth due to their extensive use of Hadeeth.

1. **Location**
   - The western belt of Arabia (Makkah, Madinah, Taif, Yemen), Syria, Sham, Africa and Egypt
   - Most of the Fuqaha' of this region followed this madhab

2. **Characteristics of the Madhab**
   - The Fuqaha' of this Madhab adhered to and only deduced their rulings from the Qur'an and hadeeth present. This was because Al-Hijaz was the cities of the Sahabah so there were an abundance of ahadeeth.
   - They made limited deductions due to their confinement to the available ahadeeth. If they could not find a hadeeth to give an answer they would say "Allahu Alam". They were also known for saying "Laa Adree – I do not know".
   - They disliked Ar-Ra'i (human reasoning) and they did not like people to ask them for their opinions, for example a man came to Salim ibn 'Abdullah ibn 'Umar and asked him about some matter; Salim replied that he has never heard anything on the matter so the man told Salim that he will be satisfied with the opinion of Salim; however, Salim refused to give his opinion saying that if he changed his opinion after the man left, how will he find the man afterwards to tell him of his new opinion.

- They refused to answer hypothetical questions and only answered questions relating to real problems. 'Abdullah ibn 'Umar was once asked a "What if" question and he told the person to put his question on the star up in the sky and then come back when the situation had actually occurred.
- They are known as "The Traditional School of Thought".

3. **Fuqaha' of the Madhab:**
   - **Sa'eed Ibn al-Musayyab**
     - His father and grandfather were Sahabi. They embraced Islam after the conquest of Makkah.
     - He was the son-in-law of Abu Hurayrah.
     - He refused to marry his daughter, Fatimah, to one of the Umayyad's Khalifah and instead married her to one of his students whose wife had died.
     - He died in 94 Hijri
     - He was known for his attachment to 'Umar ibn Al-Khattab and was called Rawiat 'Umar – The narrator of 'Umar radi Allahu anha. Almost all the stories of 'Umar can be found with Sa'eed.

   - **Salim ibn 'Abdullah ibn 'Umar radi Allahu anha**
     - It is enough to say that he was the grandson of 'Umar ibn Al-Khattab and the son of 'Abdullah ibn 'Umar.
     - Once someone asked him a question for which he did not know the answer. He refused to give his personal opinion as an answer.
     - He was considered one of the seven main authorities of Fiqh in Madinah.

   - **Nafi', Servant of 'Abdullah Ibn 'Umar**
     - He was a slave, yet he became one of the most important authorities in Islamic law.
     - He was one of the 'golden chains' or most reliable chains of narrators, i.e. "On the authority of Malik from Nafi' from 'Abdullah ibn 'Umar…".
     - Died 120 Hijri.

➔ The Second Madhab: 'Iraqi School (Ahl al-'Iraq)

Madhab of Ahl ar-Ra'i

This madhab was based on Ar-Ra'i and Qiyas i.e. human reasoning and analogy or the personal opinions of the scholars.

1. **Location**
   - Geographically, they were located in 'Iraq, hence the name Ahl al 'Iraq. Basra and Kufa were the two most prominent cities in the world at that time.

2. **Characteristics of the Madhab**
   - The Fuqaha' of this Madhab believed that the rulings of Shari'ah are based on perceivable and identifiable reasons therefore every single rule in Shari'ah has a reason which you can easily identify so you must use your mind.
     - This is absolutely the opposite of the first school of thought.
   - They are known for their extensive use of hypothetical questions and scenarios. They tried to answer all possible 'what if' questions. Thus, they are called "Ar- Ra'aitiyoon (The What-If'ers)".
   - They used to scrutinize the narrations of Hadeeth in light of reason, thus they preferred weak hadeeth or Qiyas over hadeeth which did not make sense to them.

- This is because there were fabricated Hadeeth in the area and they would rule out Hadeeth which did not make sense to them.
- They would be suspicious of narrations and would doubt the trustworthiness of people because of the historical factors and political instability such as sectarianism and factionalism, in the area.
- Nowadays, even this school says that you do not try to reason the Hadeeth after the compilation of the Sahih books; you cannot criticize any Hadeeth based on this method.

o They are known as the "The Rational School of Thought" in light of their rational thinking.

3. **Fuqaha' of the Madhab:**
   <u>In the city of al-Kufa</u>
   a. **'Alqamah ibn Qays an-Nakhai'ee**
      - He was the student of 'Abdullah ibn Mas'ood who was the student of 'Umar.

   b. **Ibrahim ibn Zaid an-Nakhai'ee**
      - He was the cousin of Alqamah.
      - From 'Alqamah and Ibrahim came Hammad ibn Sulaiman who was the teacher of Abu Haneefa.

   <u>In the city of al-Basra</u>
   c. **Al-Hasan al-Basri**
      - He was raised in the household of Umm Salamah, the wife of RasulAllah sal Allahu alayhi wa Sallam.
      - He became one of the main authorities on Islamic law and is considered one of the 13 imaams of Fiqh.
      - He died in 110 Hijri.

   d. **Rabi'ah ibn Abi 'Abdur Rahman**
      - He was the teacher of Imam Malik.
      - He was called Rabi'ah ar-Ra'i because of his extensive use of reasoning.

➔ The reasons for Differences: What went wrong?

o Geographical separation created isolation and the development of different cultures.

o Political environment for each region; in Iraq there was mostly turmoil while Madinah was peaceful. The 'ulema' in Iraq were forced to depend on reason. As for Hijaz, it was stable and safe.

o Cultural influences: In Hijaz, there were no adjacent cultures to influence Madinah. The Sahabah and the Bedouins used to just listen to and obey The Prophet (Peace Be Upon Him). In Iraq, there was a huge influence from the east; namely Persians, who brought with them their philosophy and their culture of questioning and using reason. The non-Arab converts had a lot of questions and the 'ulema' and fuqaha' in Iraq couldn't wait for ahadeeth to come from Madinah so they started to use their own reasoning. The Sahabah also used qiyas and ijtihad but Ahl al-Iraq gave these sources a higher status than the Sahabah did.

➔ Sources of Legislation in this Period

1. **Qur'an**
2. **Sunnah**

3. **Ijma'-**this became very difficult to arrive at because the 'ulema' were scattered since they did not want to be involved in the politics of the state.
4. **Ijtihad**
5. **ar-Ra'I (or Qiyas – analogy)**

Other prominent Fuqaha' of this Stage

City	From the Sahabah	From the Tabi'een
Madinah	**1. A'isha Umm al-Mu'mineen** – One of the greatest imam and mujtahideen. Also, one of greatest sources of knowledge in Islamic history and in the private life of RasulAllah sal Allahu alayhi wa Sallam. Even Abu Hurayrah studied from her. **2. 'Abdullah ibn 'Umar** – Was about 20 years old when the Prophet died. He is also considered one of major authorities in the Sunnah. He used to follow The Prophet (Peace Be Upon Him) to the extreme thus we get many narrations from him.	**1. 'Urwa ibn Zubayr ibn al-Awwam** – Was the nephew of A'isha and son of Asma' bint Abi Bakr. He was the brother of 'Abdullah ibn Zubayr. He used to spend a lot of time with A'isha so most of his resources came from her. **2. Salim ibn 'Abdullah ibn 'Umar** – mentioned above
Makkah	**'Abdullah Ibn Abbas** – Was the cousin of The Prophet (Peace Be Upon Him). He learned a lot in the house of his aunt umm al-mu'mineen, Maimuna (the wife of RasulAllah sal Allahu alayhi wa Sallam) and also about the private life of RasulAllah sal Allahu alayhi wa Sallam. He was the young child who was riding with RasulAllah sal Allahu alayhi wa Sallam when RasulAllah sal Allahu alayhi wa Sallam said, "Yaa ghulam, always be conscious of Allah and Allah will protect you". He traveled to many places, but Makkah is where the majority of his stay was. He died in Taif.	**1. Mujahid ibn Jabar** – Was the student of 'Abdullah ibn 'Abbas. His name is mentioned in every book of Tafseer. He said, "I went through the Qur'an with ibn 'Abbas 3 times and would stop him and ask for the meaning of each ayah every time". He died in his sujood. **2. 'Ikrimah- servant of Ibn 'Abbas** – Was the servant of Ibn 'Abbas who gave him license to give fatwah while he was still young. 'Ali ibn 'Abdullah ibn 'Abbas sold 'Ikrimah for 4000 dirham, and 'Ikrimah said, "You sold the knowledge of your dad for only 4000?" so 'Ali revoked this, freed Ikrimah and said "Go and spread the knowledge of my father". **3. 'Ata' ibn Abi Rabah** – He was a slave from Abyssinia. He was very short and his head was close to his shoulders. The people submitted to his knowledge and they used to announce during Hajj that he was the only one who was allowed to give fatwah during this season. Even an Abbasid Khalifah would send his sons to sit and learn from 'Ata'.
Kufa	1. 'Ali ibn Abi Talib 2. 'Abdullah Ibn Mas'ood	**1. Masrooq ibn al-Ajda'**– He was the servant of A'isha and he used to narrate

	3. Abu Musa al-Ash'ari	hadeeth from her in the form, "From Habibat RasulAllah sal Allahu alayhi wa Sallam (the love of RasulAllah sal Allahu alayhi wa Sallam)…". **2. Sa'eed ibn Jubayr**– He was an authority on tafseer. He revolted against the Umayyads and was killed by al-Hajjaj. When he was about to be killed and was brought before al-Hajjaj, he publicly made du'aa that he be the last killed person to be killed by al-Hajjaj. Soon after, al-Hajjaj got sick and no doctor could cure him. He had a severe disease of worms eating him from the inside out and thus he never got to kill anyone else and Allah answered the du'aa of Sa'eed. **3. 'Amir ibn Sharaheel ash-Sha'bi** – He had a very good sense of humor, e.g. when he was asked if Shaytan had wife he said, "That is not a wedding I attended," then he said, "Yes" based on the ayah of Surah Al-Kahf where Allah says to take Iblees and his offsprings as enemies. Also, one day he was walking with his wife when a man asked, "Which one of you is ash-Sha'bi?", so he pointed to his wife and said, "This one". It was said that 'Amir used to laugh until he fell rolling on his back. But he was very serious and sharp when came to hadeeth and knowledge. He was an authority on Fiqh.
Basra	**Anas bin Malik** – Joined The Prophet (Peace Be Upon Him) when he was 10 years old. His mother gave him to the Prophet (Peace Be Upon Him) to serve and learn from him. Because of this, he learned so much from Prophet (saw). He said, "I've never seen anyone as Merciful or as Compassionate as The Prophet (Peace Be Upon Him), he never yelled at me, never said why didn't you do something or why did you do something." Anas related the hadeeth in which RasulAllah sal Allahu alayhi wa Sallam said, "Children were created to make you laugh and enjoy this life". If we look at it this way then we will definitely enjoy our lives.	**1. Abu al-'Aliyah**– Was the student and servant of Ibn 'Abbas. His name was Ziad ibn Fayroos. He was an authority in Qur'an and Tafseer. When Ibn 'Abbas saw him coming, he would clear a space next to him to bring him next to himself because of his high knowledge. **2. Muhammad ibn Sireen** – Famous for his book on interpretation of dreams, but there is no proof that this is his book. He was an authority on hadeeth and Qur'an. It was said that when he entered the marketplace, people would begin to remember Allah just by looking at his face. He was considered one of the most righteous and his level of righteousness surpassed every other person. He used to observe righteousness even in his

		dreams, i.e. he lowered his gaze in his dreams. He went to prison because of a debt he could not pay back. When Anas ibn Malik died, he wanted Muhammad ibn Sireen to lead his Janazah, so Muhammad was allowed to leave prison, but to fulfill it correctly he led the funeral salaah and then went right back to prison without talking to any of his family members.
Ash-Sham	**1. Mu'awiyyah ibn Abi Sufyan –** RasulAllah sal Allahu alayhi wa Sallam called him the uncle of the believers because he was the brother of Ramlah (Umm Habiba), one of wives of The Prophet (Peace Be Upon Him). He narrated the hadeeth in which RasulAllah sal Allahu alayhi wa Sallam says, "If Allah desires good for someone, He gives him an understanding of the deen". **2. Bilal ibn Rabah** – Was the muadhin for RasulAllah sal Allahu alayhi wa Sallam so when RasulAllah sal Allahu alayhi wa Sallam died in Madinah, he got depressed and stopped calling the Adhan for anyone. He couldn't stand living in Madinah anymore so he left and went to ash-Sham. He had desired to go back to Madinah and when he went, Allah made the muadhin not wake up so Bilal, out of instinct, went and called the adhan. It was said that all of Madinah woke up crying, hearing the voice of Bilal and remembering the days of RasulAllah sal Allahu alayhi wa Sallam.	**1. Mak-hool ibn Abi Muslim** – Was considered one of the major authorities on Fiqh in ash-Sham. **2. 'Umar bin 'Abdul-Aziz** – Was an Umayyad Khalifah.
Egypt	**'Abdullah ibn 'Amr ibn al-'Aas** – Was the first sahabah to document the Sunnah of RasulAllah sal Allahu alayhi wa Sallam. Some complained about this to the Prophet (Peace Be Upon Him) who then told 'Abdullah to write down because out of his (RasulAllah's) mouth is truth. He was very righteous even when young. He used to fast like Dawood, but when he got older he regretted it because he got very weak.	**1. Marthad ibn Abdullah al-Yazani-** Was the Mufti of Egypt **2. Yazeed ibn Abi Habeeb –** His Fiqh went all the way to al-Andalus
Yemen	**Mu'adh ibn Jabal** – Was sent by RasulAllah sal Allahu alayhi wa Sallam as a judge to the people of Yemen. When	**1. Tawoos ibn Kaysan –** Was the student of Ibn 'Abbas who said, "I think Tawoos is from Ahl al-Jannah".

	Rasulullah asked him how he would call the people to Islam, he said by the Qur'an and Sunnah. The Prophet (Peace Be Upon Him) approved and said, "Praise be to Allah who has guided the messenger of the messenger of Allah. Mu'adh thought that when he left Madinah he would never see the Prophet again so made a point of hugging RasulAllah sal Allahu alayhi wa Sallam. He was one of the few people who the Prophet (Peace Be Upon Him) held his hand and told him "I love you for the sake of Allah". RasulAllah sal Allahu alayhi wa Sallam also gave him the advice to never forget to say, "Allahumma antas-Salaam wa Minkas-Salaam, Tabaarakta Yaa Dhal Jalaali wal-Ikraam " after every salaah. Mu'adh was traveling from Yemen to Madinah when the Prophet (Peace Be Upon Him) died so he didn't find out until got to Madinah and realized the different atmosphere. He didn't stay in Madinah long after that.	**2. Yahya ibn Abi Katheer-** Was the faqeeh of the tabi'een in Yemen.

Faqeeh Says…

From now on, you'll be presented with many names of some great scholars of Islam. I want you to get used to these names, because soon you'll be reading books of Fiqh which frequently attributes different opinions to them and discuss different opinions in Fiqh and you need to have a basic knowledge of their names and the periods they lived in.

One more thing: don't you think it's time to know more Muslim scholars than those you've always heard of and whose names you repeatedly mention in your conversations?

Stage 4

Era of the Great Imaams of Fiqh

Building & Flowering (132H-339H/753CE-960CE)

Geographical and Political Review: The ‘Abbasids



The Ummayyads were not the best Khilafah, by any means, but they brought a lot of good to the Islamic state. In fact, Abdul Maalik ibn Marwaan, the fourth Khalifa of their dynasty, was considered a scholar of hadeeth. There is an incident where he was greeted as “ameer al-mu’mineen,” which meant his father had passed away. He was reading Qur’aan at this time and kept reading. Then he closed it and said, “Subhanallah, this may be the last time I have contact with this book” (authenticity is debated of this incident).

After the Ummayyad khilafa came the Abbasid khilafa. The Abbasids were followers of the Sunnah and they came from Khurasaan in Iran and formed an alliance with the Alawis of the Shia. This alliance caused a literal massacre of the Ummayyads at the hands of Abu Abbas al Saffah. The Ummayyads went to the West (toward Andalus) after their defeat, they established their own khilafa there and remained there for about three centuries. Abu Abbas al Saffah was the leader of the Abbassid Khilafa. He gained the name al Saffah meaning “the Butcher,” because of all the people he killed in his ruthless efforts to eliminate the Ummayyad family. His full name was Abu AlAbbas Abdullah Al Saffah ibn Muhammad ibn Ali ibn Abdullah ibn Abbas ibn Abdul Muttalib ibn Hashim (أبو العباس عبد الله بن محمد السفاح). The Abbassid khilafa traces their ancestry to Rasulullah (salla Allahu alayhi wa sallam) via his uncle Abbas.

The Abbasids made dramatic changes in the Islamic state, including moving the capital of the state from Basrah to Baghdad. Baghdad became known as “Dar-us-Salaam” because it became a trading and religious center. People would travel to this city due to its’ diversity, great scholars and famous schools. It was also known to be very tolerant of other cultures and thus it became diverse and remained the capital for over 500 years. The Abbasids however reached their peak during the time of Haroon Al-Rasheed, the fifth Abbasid khalifah, it was under him that the Abbasid khilafa flourished. He helped establish the regions of Turkey, Azerbaijan, Kazakistan, and that area in general. Because he helped establish them he also received military support from them. There are some stories against him that claim he was a wrongdoer but they are fabricated. He was a pious man and was known to fluctuate between Hajj and Jihaad on a yearly basis.

There were two periods for the ‘Abbasids centralization and decentralization aka Medieval Period. Centralization of the khilafa and the Ummah in the first 200 years with their capital. Then, decentralization due

to corruption, luxury, and forming of new states within. During the decentralization period the people as a whole recognized the authority of the Khalifah though they had differences with him. Many states were formed within the ‘Abbasids and this was due to resentment of Arabs and other groups due to reliance of the Khalifa on Turkey for armed forces.

Characteristics of this Stage

1. **Period of the Great Imams**
   We are speaking of the great leaders of Fiqh. There are more than 13, but only the most influential 13 are mentioned (please look to the next section).

2. **Dispute over Usool-Al-Fiqh**
   For the first time, you had the code appear from which the scholars derived their Fiqh. An example would be weak ahadeeth over Qiyaas for the Hejazi Madhab. However, the new and old terminologies were not defined. This is because nothing at that time was exclusively written down on Usool-ul-fiqh.

3. **Emergence of Juristic Code**
   Due to the code of Fiqh, scholars started to become more specific with terms and formalized, organized and codified.

4. **Evolution of Madahib**
   There was a really positive competition for knowledge and people learned from scholars of different schools. Many of the Prominent scholars we know to till this day became more influential due to prominent students.

5. **Compliation of Different Islamic Sciences**
   - Hadeeth- You had Bukhari, Muslim, Abu Dawood, and musnad of Imam Ahmed.
   - Usool-al-Fiqh- Imam As-shafi’ authored “*Ar-Risalah*.”* 1st book formally written on UsoolalFiqh.
   - Tafseer- Imam at-Tabaree came in to our lives.
   - And more, even in non-islamic sciences like math and medicine.

6. **Absence of Factionalism**
   This was quite unique as there was no fighting even with various opinions. Some were even comfortable changing from one school to another.

Factors Affecting Fiqh

1. **State Support for Scholars**
   This is one of the greatest factors affecting fiqh. There was the spread of one school of though as law of the land. For example, Abu Jafar Al Mansoor wanted to choose one Madhab for ‘Abbasids in order to unite laws of the state. He was closest to Imam Abu Haneefah and thus he chose Abu Yusuf as the Supreme Judge. You found most of rulings based on the Hanafi Madhab.

2. **Freedom of Intellectual Research**
   Total freedom and no restriction was common and thus even deviants would be allowed to express their opinions. AThere is an incident with Hasan Al Basri, someone asked Imam Hasan Al Basri, about what happens to one who commits a major sin. A student of his, Wasil ibn Ata, responded before his teacher

could, by claiming he would be in a “station between muslim and kaafir.” Hasan Al Basri said that this was not the view of ahlul Sunnah wal jamah and kicked him out of the halaqa. This student ended up as the founder of the Mu’tazila and was promptly executed.

3. **Increase of Centers of Learning**
   People would travel to seek knowledge and had a quest to identify authentic hadeeth from fabrications. Even scholars would travel all around the state to seek knowlege.
   They traveled to Madinah, Iraaq, Basrah, and Kufa. The most famous center of learning was called, Dar-ul-hikmah and was led by Al-Ma’mun, the ‘Abbasid khalifah. He would invite scholars and students of knowledge to come and debate in all the sciences, not just religious sciences. He also started a movement of translation of Islamic and non-Islamic books, without censorship. This led to other deviant ideologies due to translated works of philosophy of the like of Aristotle and such.

4. **The Spread of Debate and Discussion**
   Like stated in the previous point Ma’mun would invite and welcome debates from everyone. Thus you had Me’mun open up a debating court, in which he himself would participate.
   They even had a story of Abu Ja’far al-Mansoor offering poetry competition that said winner would get gold that weighed as much as the material the poem was written on, if they composed a poem the khalifa and his servant did not know. It took a long time as he had an excellent memory. The winning poem exists till today and has one beautiful beginning line. The rest is difficult to read and thus difficult to memorize.

   صوت صفير البلبل ** هيج قلبي الثمل

   الماء والزهر معا ** مع زهر لخط المقل

5. **Abundance of Unprecedented Problems**
   With the expansion of the state, you had new cultures, new questions, and new debates.

6. **Influence of Adjacent cultures**
   Living near other cultures led to interaction and ideas being exchanged.

7. **The infiltration of Logic and Scholastic theology**
   People began using logic to explain and interpret even basics of Aqeedah because of the profuse amount of debates.

8. **Emergence of New Sects**
   The new sects that emerged were the Mu’tazila, the Asharee and the Maturidiyyah.

9. **Compilation of Fiqh**
   For the first time fiqh became its own independent science on a large and systematic scale. Fiqh was divided into Usool (primary principles) and Furoo’ (secondary principles) of Islamic law.
   Before the compilation there were some personal compilations. Some were written by the fuqaha themselves and others were dictated to the students. Imam Malik’s *Muwatta* was a mix of ahadeeth fiqh. While Imam As-Shafi’s *Ar-Risalah* was a total book of Usool al Fiqh.

Aqeedah and Fiqh (Part Two)

The general body and those in power, were of ahlus-sunnah in part one of Aqeedah and Fiqh. But now you had the Mu'tazila take control of power and influence the general body. The transition of power from Ahlul Sunnah to the Mutazilah ideology was through the Abbassid khalifa Haroon Rasheed. Haroon Rasheed wanted his sons to be the most knowledgeable and have the best teachers. Unfortunately, one of their most influential teachers was of the Mu'tazila ideology by the name of Abul Hudayn al 'Alaa. He was the primary teacher of Rasheed's son, Al Me'mun and his brother. Al Me'mun eventually became the Khalifa and tried to enforce his Aqeedah intellectually through debate. When this did not work, he used force to convert scholars to the Mutazilah Aqeedah.

He exiled, killed and even tortured many scholars which led many to become weak and accept him out of Taqiyyah (allowance of denouncing your faith to save your life). Because of this the position of Ahlul Sunnah wal Jamah became weak. Many young people would succumb to Me'mun in order to gain power. Imam Ahmed was one of the well-known scholars to keep standing against the Khalifa's aqeedah. State religion became Mu'tazila and Al-Mahdi came after three Khulafaa to remove this strictness but the effect lasted till today.

Though the Mutazilah no longer held political power they still held intellectual power, it became one of the most rampant ideologies amongst the Muslims. Therefore they had to be debated and defeated. Two approaches were used to answer the Mu'tazila. Ahlul Hadeeth (aka Ahlul Hijaaz) said to stick to the Quran and Sunnah and leave philosophy and innovation. Ahlul Ra'i (aka Ahlul Iraq) said to use their same ideology to refute them (The Muutazilah used 'Aql as their primary source of law).

The approach of Ahlul Ra'i led to the evolution of the deviant ideology, Ashari. Ahlul Ra'i since they decided to use the Mutazilah ideology to defeat the Mutazilah they had to create rules and guidelines for themselves. However, when they did this they trapped themselves into a corner and were forced to accept some of the Mutazilah ideas. This led to the introduction of the Ashari sect.

This is also when the term "Salafia" became popular. Salafi refers to the practice of the first 3 generations. Today, it has been tarnished with a stereotype such as people who connect their feet, look weird, and are really strict. Can you use it for identification? Sure, but its verity depends on your actions and your actions could verify it or negate it. The true definition that was intended by those who first used it was the practice of the Qur'aan and Sunnah according to the Prophet (S.A.W) and the first 3 generations. This was done to differentiate from the innovators like the Shia and Mu'tazila.

Salahuddin Ayyubi was an Asharee and still we love him for the work he has done which was unmatchable in his time in terms of Jihaad. That being said, we love him for what he did for this Ummah and we make du'a for him that Allah forgives his mistakes but we don't love his aqeedah!

Evolution of the Madhaahib

Stage One: Period of the Imams
Stage Two: Period of the Students of the Imams

It was the students that made their school of thought influential. If you had good followers, your knowledge would spread. Also, the dates shown after each name indicate the date of death. The date of birth is no less important than the date of death. It just helps you put the historical era in context to determine what type of knowledge they may have been influenced by.

Faqeeh Says…

The dates shown after every name usually, according to the classical works of history, indicate the year the Imam died in. Although the birth date is no less important but we'll here follow the same tradition unless otherwise required. This is to help you put the picture in its historical context. I'm sure it'll help you a lot, the way it helped me.

1. **al-Hasan al-Basri 110H/727CE**
   He was in Basra in Iraq. There is a debate over which school of thought he belonged to, both the Iraaqi and the Hejaazi sides claim him. Khaled ibn Safwan was a close neighbour of al-Hasan al-Basree. Describing him once he said: I never saw a man like him. His outward appearance is identical to his inner reality, his words are identical to his deeds; if he enjoins what is right he is the first to do it, and when he forbids what is wrong he is the farthest one from it. I found him never in need of other people, but people were in need of him.

2. **Abu Haneefah 150H/767CE**
   He was in Kufa, Iraaq. It has been pointed out that Abu Haneefah was the first to codify Islamic law or jurisprudence (commonly known as Fiqh) compiled from the Qur'ân and the Sunnah.

3. **Al-Awza'i 157H/774CE**
   He was in Ash-Shaam, specifically Lebanon. He was born in Lebanon and then went to Demascus and then back to Beirut. He was a descendant of the prisoners of war from China but was a free man. He was from the people of Ahadeeth so he despised analogy. Emigration of the Umayyads spread his school of thought to AlAndalus (Spain) with similar town names as they had previously in Ash-Shaam. The Maliki Madhab replaced it in time.

4. **Sufyan At-Thawri 161H/778CE**
   He was inKufa, Iraq. He was considered a Tabi tabi'een, 3rd generation of Islam. He received assignment as a Supreme Judge from the Khalifah and threw it in the river while running in to exile. He was said to be so pious that he lowered his gaze in his dreams.

5. **Al-Layth ibn Sa'ad 175H/783CE**
   He was born in Egypt and was given the title of the great imam. They would follow his orders over the king of Egypt. To solve this, they tried to assign him as governor but he refused. He was also one of the teachers of Imam Shafi'ee.

"Al-Layth was more knowledgeable than Maalik but his students wasted his knowledge." – Ash-Shafi'ee

6. **Malik ibn Anas 179H/801CE**
   He was born in Madinah, grew up in Madinah, gained knowledge in Madinah, and he died in Madinah, never leaving Madinah once. His Fiqh is famous for having Usool of the Madinites, or the way of the people of Madinah.

7. **Sufyan ibn 'Uyaynah 198H/805CE**
   He was born in Kufa, Iraq but lived in Makkah for the rest of his life. He was one-eyed and was born in Kufa but lived mostly in Makkah. He was considered an Imaam of Makkah and an authority in hadeeth. He set early precedence of writing his knowledge in Tafseer. The Shafees say: "Knowledge is based on three: Malik, Al-Layth, and Sufyan."

8. **ash-Shafi'ee 204H/820CE**
   He was born in Ghazzah, Palestine and descended from the Banu Hashim family. He learned from Imam Malik, the student of Imam Abu Haneefah, and produced the student, Imam Ahmed "Ahlus-Sunnah" Hanbal. He was known for his amazing memory and beautiful poetry.

9. **Ishaq ibn Rahawayh 238H/845CE**
   He was born in Naisabur, near the borders of Iran and Afghanistan. He was considered leader of believers in Hadeeth and one of the direct teachers of Imam Bukhari. Some say he was the inspiration for his book, Sahih-Al-Bukhari.

10. **Abu Thawr Ibrahim ibn Khalid al Yammam 240H/847CE**
    He was born in Baghdad, Iraq. He was a great Imam and Mujtahid with a lot of odd opinions. One is that women can lead Jumu'aa. Thus, he inspired Amina Wadud, naudobillah. He was originally of the Ahl-ar-Rai' but met Ash-Shafi'ee and then changed to Ahl-al-Hijaz.

11. **Ahmad ibn Hanbal 241H/855CE**
    He was born in the Khurasan region. Imam ath-Dhahabi described Ibn Hanbal as, "The true Shaikh of Islam and leader of the Muslims in his time, the hadith master and proof of the religion".
    Ali ibnul-Madini, the great Imam of Hadeeth said: "Truly, Allah reinforced this religion with Abu Bakr as-Siddiq the day of the great apostasy (ar-Riddah), and He reinforced it with Ahmad ibn Hanbal the day of the Inquisition (al-Mihnah)."
    Harmala said: "I heard ash-Shafi'ee say: 'I left Baghdad and did not leave behind me anyone more virtuous, more learned, more knowledgeable than Ahmad ibn Hanbal.'"

12. **Dawood Ad-Dhahiri 270H/877CE**
    He was born in Baghdad. He was the founder of the literalist school of thought.

13. **Ibn Jareer At-Tabari 310H/917CE**
    He stayed in Tabaristan but reached up to Baghdad. He is considered one of the great Imams of all time and left the largest written history compilation but most of it was wiped out by the sacking of Baghdad by the Mongols. He was the first one to write about Ikhtilaaf al fuqaaha.

The Four Imams and Their Madhaahib

THE IMAM OF FIQH
Abu Haneefah an-Nu'man ibn Thabit ibn Zootta
(80H-150H/702CE-767CE)

It is not permitted for anyone to accept our views if they do not know <u>from where we got those views from</u>.
~ Imam Abu Haneefah (رحمه الله), from Hashi'yat Ibn 'Abideen

قال عبد الله بن المبارك رحمه الله: "افقه الناس ابو حنيفه ما رأيت في الفقه مثله"

The most knowledgeable in Fiqh amongst people is Imam Abu Haneefah. I have never seen in Fiqh a man like him.
~ 'Abdullah ibn Mubarak

Fiqh in their times had a general definition which was using the Qur'aan and Hadeeth to answer questions.

قال الامام الشافعي رحمه الله : " الناس في الفقه عيال إلى أبو حنيفه"

People are totally dependent on the Fiqh of Abu Haneefah.
~ Imam Ash-Shafi'ee

FROM THE LIFE OF THE IMAM

His Lineage

Imam Abu Haneefah's father was a Muslim and his grandfather was a Persian who was the first to accept Islam. There is a debate whether his grandfather was a slave or not but Imam Abu Haneefah said that he was never a slave. It is said that his grandfather took his father Thabit to see 'Ali ibn Abi Talib when he was in Kufa. 'Ali made du'a for Thabit to be blessed and he had a blessed son (Abu Haneefah).

His Early Life

Some say he was born in Kufa and others say he was born in Al-Ambaar. (region that is the current center of Iraaq.) He was born in 80 H during the time of Khilafa Abdul Malik ibn Marwan and died in 150 H during Khilafa of Abu Ja'far al Mansoor. Therefore, he was able to witness the change of the government through the Ummayyids and the 'Abbassids, and thus matured through this.

Was Imam Abu Haneefah a Tabi'ee?

A Tabi'ee is someone who lived during the time of the sahabah and were Muslim, they met a companion once in his life, and they died on Islam.

Anas ibn Malik died in 90H in Basrah so he could not have met him as he did not travel. Abdullah ibn Abi Awfa died in 87 H in Kufa, which is possible. Shal ibn Sa'd as-Saa'de died in 88H in Madinah , which is

again not possible. Abu Tufail Amir ibn Wattila died in 110H in Makkah and that again is not possible as Abu Haneefah did not travel outside of Iraaq. So there are no authentic reports that confirm his status as a Tabi'ee.

His Shuyookh

He was not famous for traveling in search of hadeeth which was an art in that time. The reason was because Iraaq was a center of knowledge and many famous Shuyookh would come there to learn and teach.

- **Hammad ibn Abi Sulayman**- He was the most influential teacher of young Abu Haneefah and Abu Haneefah stayed with him for 7 years and according to some reports, 18years. So when he was gaining knowledge, he confined himself to one sheikh and then once he developed his knowledge, he went to other schools. Hammad (May Allah's mercy be upon him) was a student of Ibrahim An-Nakhai'ee, who was in turn a student of 'Alqamah ibn Qays an-Nakhai'ee, who was in turn a student of 'Abdullah ibn Mas'ood. Abu Haneefah said: "I have never made a Salaah without making du'aa for Hammad or any Shaykh that I have studied with." After Hammad died, it was Abu Haneefah who succeeded him as the head of his Halaaqa.

  Gem: We should always make du'a for our shuyookh, and for all the people whom we have gained even the tiniest piece of knowledge from.

  Some say he was a "tajir" or a bisnessman/trader. Usually, people looked down upon him for this because students are supposed to concentrate on his students. But, and Allah knows best, it did not affect him at all in becoming a great Imam.

  Gem: This can be an inspiration for us part-time Al-Maghrib students as well to not make school an excuse for not learning.

- **Umar ibn Abi Dhar** was a contemporary scholar who considered Imam Abu Haneefah his Shaykh. Abu Haneefah's mom considered Abu Haneefah as just a son even with his great knowledge so she would tell him to ask Umar questions even though he knew the answers. When Abu Haneefah came to Umar for questions, Umar said: "your mom told you to ask me? Ok, so what's the answer to the question?" Then Abu Haneefah would give Umar the answer and take his own answer back to his mom on the authority of Umar.

His Students

Abu Yousuf Al Qadi (Ya'qoob ibn Ibrahim) - He became the first supreme judge in Islam and was chosen by the 'Abbasids. In this position, he would clearly select people from his own school of thought because those were the ones he knew. Thus Hanafi Fiqh became the state-sponsored Fiqh but it was still not as evolved a Fiqh as it is today. He was also never afraid to express his view against rulers if he had differences, even with his grand position.

Muhammad ibn Al-Hasan as-Shaibani – Being younger than Abu Yusuf, Muhammad took his knowledge from Abu Yusuf. He also interacted with Imam as-Shafi'ee and Imam Malik and followed them as well in many matters of Fiqh. Though Imam Abu Haneefah did not write his opinions of Fiqh down, Muhammad took his opinions and compiled them in to book form. Also, when you open Hanafi books of Fiqh, the opinions that are given weight are Abu Haneefah, Abu Yousuf, and Mohammed ibn Al-Hasan. Some also

include Imam Zafar ibn Hudail and so the opinions of the big three are weighed and if they differ, then they take the strongest opinion. So we learn the school of thought is not always just about the imam but also about their respective students.

His Character

Our hero was a merchant by profession, but he spent both ends of the day in teaching in the mosque. He was exemplary in his conduct both as a merchant and a teacher. For he was not only very honest in his commercial dealings, but he was very conscientious as well, to the extent that he would refuse any profit he felt uneasy about, even if it was a legitimate one.

Was Imam Abu Haneefah a Muhaddith (scholar of hadeeth)? What was his status in Hadeeth?

Followers of his Madhab want to say yes because they do not want his status to get diminished. But the truth of the matter is he never claimed to be a scholar of hadeeth and so we take his word in this case over his followers. In his works, the total number of ahadeeth that have been counted by his later students are 215.

THE USOOL OF MADHAB ABU HANEEFAH

-قال الإمام أبوحنيفة – رحمه الله – :

"إني آخذ بكتاب الله إذا وجدته، فما لم أجده فيه أخذت بسنة رسول الله صلى الله عليه وسلم، فإذا لم أجد فيها أخذت بقول أصحابه من شئت، وأدع قول من شئت، ثم لا أخرج من قولهم إلى قول غيرهم، فإذا انتهى الأمر إلى إبراهيم، والشعبي والحسن وابن سيرين وسعيد بن المسيب – وعد رجالا قد اجتهدوا – فلي أن أجتهد كما اجتهدوا."

Imam Abu Haneefah (May Allah's mercy upon him) said:

I take what I find in the book of Allah, then what I find in the Sunnah of the Messenger of Allah if I don't find it in the Qur'an. If I don't find it in the Sunnah of the Messenger of Allah, I select from the statements of whomever I wish of his companions and leave whomever I wish, but I do not take other than their statements. Then when it comes to Ibrahim, ash-Sha'bi, al-Hassan, ibn Sireen, Sa'eed ibn Al-Musayyab – and he counted a number of other Mujtahids – I make my own Ijtihaad as they did.

His Usool:

1. **Qur'an** (main source)

There is no doubt this was his starting source and he based even some fataawa directly on Qur'aan. Aa'm (general words) and Khass (particular to situation). Also, he would look in to Mutlaq (absolute) vs. Muqayyad

2. Sunnah (verification of hadeeth)

At the time of Imam Abu Haneefah, there was a lot of fabrication of hadeeth and even false claims of Prophethood. Thus, the scholars of Iraq who taught him were very critical of hadeeth that were narrated to him and were selective. This was why they were known to know very few hadeeth and include very few in their Fiqh. So this affected his Fiqh. Also, Imam Abu Haneefah differentiated between Mutawaatir (many narrations of hadeeth to make it undeniable) versus Ahad (solitary or single report). Thus he also made a differentiation between Fard and Waajib. Fardh or obligatory was whatever was Muhkam (clear) in the Qur'aan and whatever was Mutawaatir in Hadeeth. Waajib or necessary was anything that was Mutashabih (unclear) in the Qur'an and Ahad in hadeeth.

3. **Statement of Sahabi (one companion's statement)**
When it came to the Sahabah and a single statement, Imam Abu Haneefah was selective and accepted Iraq Sahabah like 'Umar, 'Abdullah ibn Mas'ood, and 'Ali ibn Abi Talib. Hejazi statement: "For every 100 hadeeth (you receive from Iraq), you drop out 99 and be suspicious about the rest." This was due to people revolting against Umayyads and making false ahadeeth and claims, who were trying to push their rules in to Iraq.

4. **Qiyaas (analogical reasoning)**
Imam Abu Haneefah was famous for using Qiyas over weak ahadeeth. This is using analogy from ruling already found in the texts to derive new rulings. So this is done by finding the illah (cause of a ruling) and then you see if it exists in a new case. It is also called Ra'i or intellectual reasoning as you apply old rulings to new cases. So if they did not have hadeeth, they did not say Allahu 'Alem but instead used their reasoning to derive rulings.

5. **Iftiradh al Masai'l (Hypothetical Problems)**
These were called, "What if" questions and earned the Iraqis the name of the ar-raaitoon or the "what-ifers." After analogy, people would use intellect to invent new problems so they could derive more rulings in case these problems happened. It's good to a point but then people exaggerated and made impossible examples like if a fish led Salaah, would it be accepted. There was an incident of Imam Abu Hanifah when he saw a man who was so quiet and looked really religious. So out of respect for him, Abu Haneefah did not extend his leg in his direction. The man asked: "If the sun comes up before Fajr time, when should we fast?" Imam responded by saying, "it's time to extend my leg" out towards him. There are reported to be 60,000 or 30,000 hypothetical cases in Abu Hanifah's fiqh but they were not originated from him. Sometimes, people exaggerated so much that entire sections of Fiqh were thrown out of the hanafi books.

6. **Istihsan (juristic preference)**
Istihsan is "Preference that is given to one rule over another due to perceived superiority." It is something that a Mujtahid feels in his heart about an issue and it being correct. Imam Abu Haneefah would adopt this even over analogical reasoning. Imam As-Shafi'ee rejected this totally and said whoever does this, is becoming a lawmaker.

7. **Al-Hiyal (Juridical Evasions)**
This is basically a "legal loophole that saves people from an Aimah.(strict resolute)." The principle of Fiqh they follow is Al-Makhaarij Al-madaa'iq or removal of difficulty. (Allah does not burden a soul greater than they can bear) An example would be that a man can give an oath that he will have intercourse with his wife

during Ramadan or he will divorce her. Then to fulfill the oath, he goes on a journey so that his fast is broken and then he can come back and approach his wife.

Some people go to an extreme to use this principle to reverse rulings of the Shari'ah. An example is mentioned by Ibn-Al-Qayyim of a man who has jewelry store with gold in it and has to pay Zakah. Some would allow this man to store it in a bag of rice and give it to a Zakah collector. Then since the rice would be too much, he would pay the collector to take it off his hands and get the gold back in full for a lesser price.

Many other issues can come if you take this to an extreme and people go to extreme upon extreme. The job of a faqeeh, though, is not to judge intentions or show emotion. If you can't give right Fatwaa and will have too much emotion or be biased, step down and let someone qualified do it. Also most Fuqaaha would refuse leadership positions because it might show Walaa (allegiance) to the ruler and even over Allah and the Prophet at times. Also, if someone famous accepts Khalifa, many great masses will follow as well so your responsibility is great. The Jews who used to put their nets out on Friday night to catch fish on Saturday is an example of Juridical Evasion.

The Objections against this Madhab are as follows in general:

a. Too much use of intellectual reasoning and analogy.
b. Abandoning of the Sunnah for ra'i.
c. Some also say Abu Haneefah held the opinion of Imaan of the Murji'a but his is debated.

Major References for the Hanafi Madhab

First: The statements of Imam Abu Hanifah

1. **The books of Muhammad ibn Al-Hassan**

2. ***Al-Kafi* by al-Hakim ash-Shaheed 344H/955CE**
   This book has recorded opinions of famous Hanafi scholars like Abu Haneefah and his two major students, Abu Yusuf and Imam Mohammed.

3. ***Al-Mabsoot* by As-Sarakshi**

It is the encyclopedia of the Madhab of Imam Abu Hanifah and somehow, it also contains comparative Fiqh. The author dictated this book to his students while he was in a well. Food for thought:

♌ **<u>Food for Thought!</u>**

If Abu Haneefah did not leave any Usool of his written down, then how do we know it today?

a. His students did this for him.
b. Muhammad As-Shaybani left the early reports and opinions from Abu Haneefah in book form.
c. Zafar ibn Hudayl also helped with his opinion.

Second: The Final Authentic Compilations

1. ***al-Bahr ar-Rai'eq* by ibn Nujaim**

2. ***Minhat Al-Khaliq Hashiyat* by bin 'Abideen**
   This one has the footnotes taken by ibn 'Abideen on *al-Bahr ar-Rai'eq*.

3. ***Al-Hidaayah* by Al-Mirghinani**
   This one is used widely today in your local Darul-Uloom. It is a sophisticated and summarized version of Abu Haneefah's Fiqh.

4. ***Fath al-Qadeer* by ibn al-Humam**
   This was one of the most important books on the usool of the Hanafi Madhab.

Prominent Fuqaaha of the Hanafi Madhab

1. **Ahmad ibn 'Umar al-Khassaf** – 261H/874CE
   He left a book of usool al-fiqh of Abu Haneefah.

2. **Abu Ja'far at-Tahawi** – 321H/934CE
   He wrote Al-Aqeedah At-Tahawiyyah.

3. **Abu Mansoor al-Maturidi** – 333H/946CE
   He was founder of the Maturidi Aqeedah, which is primarily the same as the Ashariyyah, with differences in the aspect of Qadr. (Maturidi in East, Ashari in West)

4. **Abul-Hassan al-Karkhi** – 340H/953CE
   He wrote one of the most important books on Hanafi Usool. Whether he was Murji'a or not should be referred to Shaikh Yasir Qadhi.

"Any Ayaat or Hadeeth that does not fall in to the Madhab of Abu Haneefah must be abrogated or have a different interpretation." He made a statement similar to the one above and this is heavily criticized by many scholars, especially Imam Shafi'ee's students, who said this was an extreme view.

Important Notes and History:

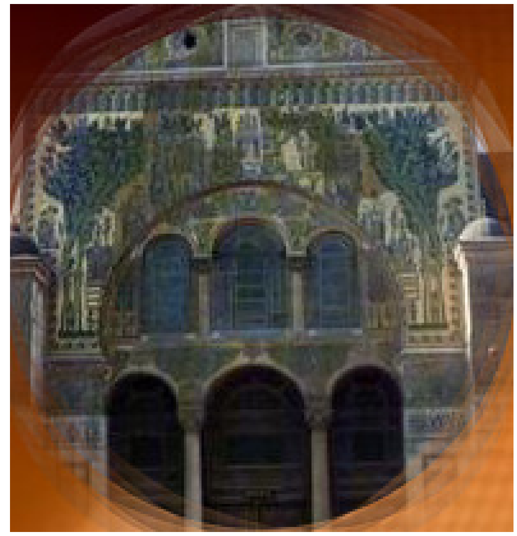
Some say Imam Abu Haneefah died in prison because he would not accept the supreme judge position from the 'Abbasids. After 'Abbasids became more established, they did not force positions or allegiance so scholars became more.

The Hanafee Madhab spread in India, Pakistan, As-Sham, central Europe, and parts in Egypt and Afghanistan. Students would still take from each other and this is why Madahib spread to so many locations with different opinions from their original Imams. When Abu Yusuf was spreading his opinion to the best of his knowledge, there was no established Hanafee Madhab. The Hanafee Madhab did not spread to North Africa and other areas because of what many say was political support for the Maliki and Shafi' Madahib. At one time, Hanafee and Shafi'ee Madahib spread to the East to Baghdad and Hejaz. Then the Mongols came and wiped out Baghdad and some of the other regions of the East and adopted the Hanafee Madhab and made it the state religion.

Ibn Hazm commented and said it is Madhab Abu Hanifah in the East and Imam Malik in the west. And abu Haneefah’s early students shared knowledge with other schools of thought and were objective in their learning but the latter students became more close-minded. There is a claim, according to Ibn Khaldun, that Persians accepted Hanafi Madhab because of its closeness and ease to their culture and because Abu Hanifa was Persian. This, however, does not seem to be the most valid reason and Allah knows best

IMAM DAR AL-HIJRAH
Maalik Ibn Anas al-Asbahi

(93H-179H/717CE-801CE)



He was called Imam Dar al-Hijrah because he was born in Madinah, grew up in Madinah, lived in Madinah, never left Madinah, except for Hajj, and died in Madinah. When he was asked about this, he said that it was because he loved Madinah so much.

Truly I am only a mortal: I make mistakes and I am correct sometimes. Therefore, look into my opinions: all that agrees with the Book and the Sunnah, accept it and all that does not agree with the Book and Sunnah, ignore it.

[Imam Malik ibn Anas رحمه الله from *Jami' Bayan al-'Ilm wa Fadluh*]

قال عبد الرحمن بن مهدي, رحمه الله:

"ما رأيت أحدا أتم عقلا ولاأشد تقوى من مالك."

I have never seen any one full of wisdom and more fearful of Allah than Malik.

~ Abdur-Rahman ibn Mahdi

قال ألإمام أبو داود، رحمه الله:

"أصح الأسانيد مالك عن نافع عن ابن عمر."

The most authentic chain of narrators is: Malik on the authority of Nafi' on the authority of Ibn 'Umar.

~ Imam Abu Dawood

عبد الله بن وهب, رحمه الله:

"سمعت مناديا ينادي بالمدينة أن لا يفتي إلا مالك و ابن أبي ذئب."

I heard a caller cry in Madinah that no one was allowed to give Fatwa except Malik and Ibn Abi Dhi'eb.

~ Abdullah ibn Wahb

*Caller here refers to Khalifah at the time, which was most likely an 'Abbassid khalifah, Wallahu Alam.

Faqeeh Says…

Fatwa (pl: Fatawa) is a juridical verdict or the legal opinion given by a Mujtahid or Faqeeh on an issue of religious importance old or new.

His Lineage

Malik ibn Anas ibn Malik ibn Abi Aamir al-Asbahi. He was not the son of the Sahabah, Anas ibn Malik. His family was from Yemen but they migrated to Madinah. Some scholars say that his great grandfather lived in the time of the Prophet (Peace be upon him), but did not see the Prophet. He is therefore a Taabi'ee Mukhadamm. His grandfather had the honor of being one of the four who buried Uthman secretly in the middle of the night. His father, Anas ibn Malik was not known for any scholarship but he kept pushing him and his siblings to seek Islamic knowledge. His brother and paternal uncle were known for their knowledge of Hadith.

His Early Life

He was born during the time of the Ummayids, during the time of Waleed ibn Abdul Malik ibn al-Marwan and he died during the Abbassid era, during the time of Khaleefah Harun Ar Rasheed.

His Shuyookh

- **AbdurRahman ibn Hurmuz** was his shaykh for 7 years. During his lifetime, Imam Malik did not visit another shaykh. He influenced Imam Malik of one particular culture, *"Nisful ilm la adree,"* meaning half the knowledge is (saying) I don't know. Ibn Hurmuz said, "The scholar should teach his student to say 'I do not know' until they take this as one of their principles and final resort so if someone is asked about something they don't know, then they say, 'I do not know.'" Hence, if you do not know the answer, say 'la adree.' Nowadays people start off with saying 'I don't know,' yet they continue in giving their opinion. Hence, Imam Malik was strictly Hijazi and did not give answers unless he was sure. Once he was visited by a man from Andalus and was asked 40 questions by him. He answered 2 and replied 'la adree' to 38 of them. The man became upset with him for he had traveled a great distance to see him.

- **Imam Rabee'a ibn Abi AbdurRahman** who was also known as Rabee'a ibn Faroookh. Even though he lived in Madinah and was famous for being in a hijazi area, his methodology was Iraqi. He was nicknamed Rabee'a turRa'ee because of his extensive use of Ra'ee and reasoning. There are other Shyookh whom he studied under, but the above two influenced his madhab greatly.

His Students

- **Imam AshShafi'ee**

- **Muhammad ibn Hassan AshShaibani** who was also a student of Imam Abu Haneefah. This teaches the flexibility and free exchange of knowledge, in addition to showing the love they had for knowledge. They would teach each other and learn from each other.

- **AbdurRahman ibn Qasim AlMisri**. He accompanied Imam Malik for over 20 years in Madinah. When he was young he was married to his first cousin. He got an opportunity to study with Imam Malik but was troubled to leave his new wife. So, he gave her the option of either being divorced by him, or wait for him until his return. She chose the latter and waited for him. At that time they didn't know she was pregnant. Eighteen years later his son came to Madinah with a caravan from Hijaz. He hugged his father who said, "I smell the scent of a son." This shows the patience of his wife. After Imam Malik's death, AbdurRahman ibn Qasim AlMisri went back to Egypt and spread Imam Malik's knowledge towards the West, including Andalus, and one of his students wrote *Al Mudawwanah* which is a fiqh authority of Imam Malik.

His Character

When his mother sent him to study under Rabee', she said "Learn from his akhlaaq (manners) before your learn from his knowledge." This shows the importance of akhlaaq, which should precede knowledge. Some people have the knowledge, but they do not have the etiquette of sending the knowledge to others. You should show the sunnah in your akhlaq. He was a strong follower of the Sunnah. He lived in Madinah where the practice of Madinites could be easily traced back to the Sunnah.

Because of his authority in hadith, whenever he would criticize a man in a chain of narration, no more narrations would be taken from that man.

Khaleefah of the state would feed Imam Malik. He was the unofficial ameer of the city. People would follow Imam Malik's example/opinion over that of the state, which in turn caused him trouble.

When he would be asked a fiqh question, he would dress casually, however upon being asked about hadith, he would take a shower, use perfume, wear his best clothes and then give the answer. This was because he said fiqh could involve personal opinion whereas hadith was from Prophet Muhammad (peace be upon him).

He was very handsome and white in complexion. His face was so white that sometimes it would turn red. His favorite fruit was bananas (al mowz) because it was loved by Prophet Muhammad (Peace be upon him) and in Imam Malik's opinion was that its very close to the fruits of Jannah since Allah says the fruit of jannah is available in all seasons and al mowz was available in Madinah all year round.

The Story of his book of Hadeeth (*Al Muwatta'*)

He considered this book as the stepping stone to seeking the knowledge of the Messenger (Peace be upon him). The Abbassids made a rule that all citizens had to give baya' or pledge to the state and if anyone breaks his pleadge, it's as if he has divorced his wife. Imam Malik passed a fatwa saying this pledge is not valid. The ameer of Madinah tried to tell him not to publicize this, but Imam Malik would not comply, so he had him whipped which made his followers very angry. As a result, he was beaten publicly. Afterwards, Abu Ja'far al-Mansoor, Khalefah at the time, went to apologize to Imam Malik and punished the ameer of Madinah. He came to him and said "there are no other scholars except me and you, and I get busy with politics, and you, you should write a book." He suggested that Imam Malik compile a book which could be used as a constitution of the Abbasid Empire. He then gave Imam Malik some advice on how to compile it. Abu Ja'far said, "I want you to write this book, avoiding the concessions of ibn Abbas (muta'a, riba'a) and the strictness of Umar and the odd practices of Abdullah ibn Masoud (in going to ruku', he would clasp hands between knees) and try to level it and pave it slowly." After Abu Ja'far died, Harun ar-Rashid, the next Khaleefah, wanted to put Imam Malik's book in the Ka'ba. At the time, it was a normal custom to put things of value in the Ka'ba. Imam Malik said, "I don't claim to have all the Sunnah in this book so do not put it in there." Some ulema consider this book to be the first of its kind in Islam.

His Trial

He was tested by Allah through a terminal disease, enuresis, where he wouldn't be able to control his urine. He stopped going to the masjid and when he was asked about his reason for not going, he said "not everyone can expose his reason." He did not want to cause any najasah to the masjid of Raulullah (peace be upon him). He died in Madinah.

THE USOOL OF MADHAB MALIK

1. Qur'an
Nas alQuran and Nas alHadeeth, meaning, "Explicit meaning of the Quran and the explicit meaning of the hadeeth." Meaning he valued Quran and Sunnah at same level and authority and when it came to legislation.

2. Sunnah
Unlike Imam Abu Haneefah, Imam Malik held Quran and Sunnah at the same level and authority. For him there was no difference between Ahad and Mutawatir. As long as the hadith is sound, the hadith has the same authority as the Quran. (Imam Haneefah said fard comes from mutawatir, whereas wajib comes from ahad)

3. Ijma' of the Sahabah
Unanimous agreement of the Sahabah. However, this was hard to reach after they passed away.

4. Practice of the Madinites
The term 'Madinites" is used to describe the residents of al-Madinah an-Nabawiyyah, and their practice was highly respected by Imam Malik for they remained in the city of the Messenger of Allah (Peace be upon him) and assumingly preserved the custom of the Sahabah who lived there – and the custom and traditions of the Sahabah were in accordance with the Sunnah of the Messenger of Allah (peace be upon him).

This is one of the controversial practices of Imam Malik. Since Madinah was the hometown of Prophet, and most of the Sahabah afterwards resided in Madinah and lived and grew up and established homes in Madinah, he believed the people who lived in Madinah, they interacted with each other until his time and therefore the Madinan practice was coming from the Prophet and the sahaba. This is because their custom can be traced back to the Prophet (peace be upon him). He was the only imam to consider this as part of his usool. Most scholars refuted this position because after the death of Umar, many of Madinah's residents left and people migrated to Madinah as well. Hence, practices and traditions of Madinah got mixed up with outside culture.

5. Qiyas
Imam Malik was a staunch follower of the Hijazi school of thought, so he rejected Qiyas and didn't like the extensive use of Ra'i.

6. Istislah (Welfare)
He used the extensive use of Istislah (the consideration of public welfare). This was an alternative to Qiyas and is considered rational evidence. It gives preference to certain rules that are not mentioned in Quran and Sunnah for virtue of ease of public welfare. For example, Al Kharraj was established under Umar bin AlKhattab. The general rule is to distribute the land among the army. However considering the welfare of public during the conquest of Persia, Umar figured since most of the warriors were Bedouins and they would make this land barren, he split the land and kept it in the hand of the owners. He distributed this land between the farmers themselves with the condition that tax must be paid to the Islamic state. The warriors got benefit from those taxes.

7. **Sadan lil Dhariah** سدّاً للذريعة

This means blocking the means to evil. It is to ban something that is permissible; for fear that it would lead to the practice of something haraam. For example, the ruling for driving for women is halaal because it is just like riding camels and women did that at the time of Prophet (peace be upon him). But in Saudi Arabia she would be arrested for driving because it is banned to block the means of evil. If an accident is to occur, she would be exposed to Non Mehram men. In the Maliki Madhab, thigh of a man is not awrah, however in order to block the means to evil, according to him it should not be exposed.

Major References for the Malaki Madhab

First: The statements of Imam Malik

1. ***Al Muwatta*** *Imam Malik ibn Anas*: This is available in English and has different riwayaat (narrations through different students).

2. ***Al Mudawwana*** *Sahnoon*: Sahnoon was not a direct student of Imam Malik. Asad ibn al-Furat, student of Abdur Rahman ibn Qasim and commander of North African army, studied with him asking him questions about the Madhab and Sahnoon compiled these questions and answers in a book.

Second: The Final Authentic Compilations

Imam Malik's madhab didn't have the same challenges as Imam Shafi'ee's madhab because North Africa didn't have any challenges for it so it didn't have the same methodology as some other madhabs that did have to face fabricated hadiths and such. Therefore, it led to a strong compilation and Imam Malik's madhab became a monopoly in North Africa.

1. ***Mukhtasar Khalil 'Ddiya' ad-Deen Khalil ibn Ishaq:*** Most popular matan is of Abu Zaid Al Qarawayni (it's a smaller version). This is what beginners study. The next step is the book Mukhtasar Khalil 'Ddiya' ad-Deen.

2. Different interpretations of *Mukhtasar Khalil*
    a. Al-Hattab
    b. Az-Zurqani
    c. Al-Khirshi

Prominent Fuqaaha of the Maliki Madhab

1. **Ibn Al-Majashoon** 212 H/827 CE

2. **Asad ibn al-Furat** 213 H/828 CE
   Student of Imam Abdul ibn Qasim

3. **Yahya ibn Yahya al-Laythi** 234 H/849 CE
   Isham ibn AbdurRahman assigned Yahya ibn Yahya al-Laythi as the supreme judge in Egypt. He spread the madhab in North Africa, and specifically Andalusia, a city that attracted notably people, and Yahya moved here being sponsored by the Ameer in Andalusia. Ibn Hazm attributes the spread of Maliki thought to the state and Yahya.

4. **Sahnoon** 240 H/855 CE
   Collected opinions of Al Qasim

Spread of the Maliki Madhab

Imam Malik's madhab is popular in North Africa and most of Africa. Due to massive immigration of North Africans, it became popular in Europe as well. In some Eastern parts of Africa, such as Yemen, madhab of Imam Shafee' is popular. France alone has more than 6 million Muslims so one can imagine the influence of the Maliki Madhab there. Why did it spread to west and not east? According to Ibn Khaldoon, because of cultural similarities between Imam Malik's time and the North Africans, who were mostly Bedouins, this madhab was easier to adapt to than Imam Abu Haneefa's. Unlike Imam Shafee' came to Egypt, interaction between his madhab and Imam Malik's madhab was very limited. As well as politics played a major role.

Faqeeh Says…

The term "Madinites" is used to describe the residents of al–Madinah an–Nabawiyyah, and their practice was highly respected by Imam Malik for they remained in the city of the Messenger of Allah and assumingly preserved the custom of the Sahabah who lived there—and the custom and traditions of the Sahabah were in accordance with the Sunnah of the Messenger of Allah.

IMAM AL-HASHIMI AL-MUTTALIBI
Muhammad ibn Idrees ibn ash-Shafi'ee
(150H-204H/769CE-820CE)

When a Hadeeth is found to be Saheeh, then that is my Madhab.
[Imam ash-Shafi'ee رحمه الله, from *Majmoo' an-Nawawi*]

قال ألإمام أحمد، رحمه الله:
"كان أفقه الناس في كتاب الله و سنة رسوله قليل الطلب الحديث.
ما عرفت ناسخ الحديث من منسوخه حتى جالست الشافعي."

He, Imam Ash-Shafi'ee, was the best among people in the Fiqh of Qur'an and Sunnah, but not known in the quest of Hadeeth. I have never understood Nasikh and Mansookh in the Hadeeth of the Messenger of Allah until I studied with ash-Shafi'ee.
~ Imam Ahmad

قال ابن عيينة، رحمه الله:
"أفضل فتيان زمانه." و كان إذا أتاه شيء من الفتيا او التفسير أحل عليه.

(He, Imam ash-Shafi'ee, was) the best amongst the youth of his time.
~Sufyan ibn 'Uyaynah, Shaykh of Imam ash-Shafi'ee
And when ibn 'Uyaynah is asked to give a Fatwa or Tafseer of an Ayah; he would refer to ash-Shafi'ee.

His Lineage

His name was Muhammad ibn Idrees AshShafi'ee. From his title it can be seen that he was a descendent of Prophet Muhammad (Peace be upon him). His grandfather, asSaif, was a sahabi who was captured in Battle of Badr as a mushrik. He ransomed himself and became a Muslim.

His Early Life

He was born in Ghazza, or Gaza, Palestine, in 150 H. This was the same year as Imam Abu Haneefah died, "one imam died and another was born". His mother moved to Makkah to be close to her own clan, the Hashimis. Since it was an Arab custom to take children to their geographical location, and send them to the desert, away from urban areas to learn the pure Arabic language, his mother did just that. That contributed to his eloquence in Arabic and he became a great poet and an authority on Arabic grammar, which contributed to his understanding of the Quran and Sunnah more so than the other Imams. He memorized the Qur'aan by the age of ten and started seeking knowledge with the Shyookh. He was considered as "the best amongst the youth of his time." Sufyan ibn Unayyah would refer people to him, though he was young. He was given the authority for fatwa at age 15 (unconfirmed) by Muslim ibn Khalid Az-Zindji (one of his first Shyookh in Makkah). He was born at the time of Abbassids and died in the Golden Stage but witnessed the beginning of theological and ideological fitan nonetheless.

His Shuyookh

- **Grand Mufti of Makkah: Muslim ibn Thalib**

- **Imam Ahmed ibn Hassan ashShaibani** He was Imam Abu Haneefa's student. Imam ashShaafi'e and ashShaibani were both influenced by each other's fiqh to the point where Imam ashShaafi'e allowed ruling by Qiyas and Rai'.

- **Imam Malik,** Imam ashShafe'ee memorized the Muwatta at the age of 15 and went to Madinah to meet Imam Malik to verify his reading of what he had memorized.

- **Wakee' ibn alJarraah**: Known in poetry of Imam ashShaafi'e "I complained to waqi about my bad memory, and he gave him the instruction to stay away from disobedience of Allah, because knowledge is a light of Allah, and the light of Allah is not given to someone who is disobedient." Some say because he accidentally saw the foot of a woman, and this is why he forgot and went to Waqi'. Because his memorization was so powerful, he would look at a page only once and have it memorized. In order to not mix pages, he would cover pages with blank pages, so as not to mix them.

His Students

- **Imam Ahmed ibn Hanbal**: He was not one of his close students. They met when Imam ashShaafi'e returned to Iraq on his second trip during Amin's time (khalifah after Haroon Rasheed). Imam Ahmed is noted to have said he never understand abrogation in Qur'an till he met Imam ashShaafi'e.

- **Abu Ya'qoob Yusuf ibn Yahya al Buwayti**: He became Imam ashShaafi'e's successor in halaqah. He was imprisoned for denying that Quran was created by the Mutaazilah (died 231H in prison). Whenever he heard the adhaan for jum'ah in prison, he would prepare himself, go to the door and say to the guards, "I want to go pray Jumu'aa," and they would say, "go back to your prison." Upon hearing this, he would supplicate, "Oh Allah be my witness, I am answering your call but these people aren't letting me."

- **Ismail ibn Yahya Al Muzanee**: He was a famous author of the books of Imam Shafi'e's madhab. He contributed more to the madhab than anyone else, serving it the most among all followers.

- **ArRabee' ibn Sulayman al Muradi**: was the narrator of Imam ashShafi'e's fiqh. Just like Abu Hurayrah was a close companion of Prophet Muhammad (peace be upon him), he was a close companion to Imam ashShafi'e. "No one served him personally the way Rabee' served him." Imam ashShafi'e would repeat Mas'ala many times to ArRabee' because he wasn't a fast learner. He was the last of his students to survive. He died in 270 H.

His Character

His Ordeal

Imam ashShafi'e was related to the royal family in Baghdad. The Abbasids were the cousins of Prophet Muhammad (peace be upon him). Being so, he was chosen to be the governor of Yemen for the the Abbasids. The Abbasids allied with the Shi'a in Yemen, to establish the ruling in Baghdad. In Yemen, the alawi movement was active and Imam ashShafi'e was accused of being a supporter of the movement against the Abbasids. He was brought to Baghdad to Harun arRashid. The Imam defended his case and his innocence and was then released. He took the opportunity to interact with the scholars of Baghdad. He re-met Muhammad bin Al-Hassan ashShaybani, and he got the chance to learn the fiqh of Imam Abu Haneefah. It

was reported that ashShafi'e had some debates with Muhammad bin Al-Hassan alShaybani. They were recorded, and when Harun ar-Rashid saw them he liked those debates.

His book of Usool: ar-Risalah

Ash-Shafi'e then went back to Makkah. In Iraq there was a great debate between the Hijazis and the Iraqis. Ash-Shafi'e found himself in the middle of this crisis of usool. He received a message from AbdulRahman bin Mahdi, who asked him to write a book on the principles of Islamic law or fiqh. Imam ash-Shafi'ee sent him a letter called ar-Risalah. This was the foundation for his book in usool, the first book in usool al fiqh (it is available in Arabic/English, though this is not necessarily the best book to start with to study fiqh). This was written before many of the usool were developed.

The Story of His two Madhaahib

Al Madhab al-Qadeem المذهب القديم (The Old Madhab)

He was influenced by both Hijazi and Iraqi schools of thoughts. Upon his second return to Iraq, he formed his madhab and wrote Al Hujja. It is clearly a combination of both schools of thoughts.

Al Madhab al-Jadeed المذهب الجديد (The New Madhab)

Then he traveled back to Hijaz, to Iraq and finally to Egypt. He met the students of Imam Malik, and students of students of Imam Malik. (Abdullah ibn Hakim, student of Imam Malik and one of the most influential Maliki Fuquha in Iraq). He was exposed to a totally different culture in Egypt. Iraq was vivid to culture; exposed to different fitan, new ideas and schools. However, Egypt's culture was influenced by the west so Imam ashShafi'e formed his new fiqh according to the Egyptian society and wrote the book Kitaab Al-Umm, which is considered the final compilation of his madhab by his own hands.

THE USOOL OF MADHAB ASH-SHAFI'EE

"الأصل قرآن وسنة فإن لم يكن فقياس عليهما ..."
الإمام الشافعي

The Asl (default) is the Qur'an and the Sunnah, and if not in any of them, then analogical deduction from their evidences… ~ Imam ash-Shafi'ee

1. Qur'an

The default ruling is extracted from Qur'an and Sunnah, just like the madhab of Imam Malik. If neither of these, then Qiyaas. He was not as strict in terms of reasoning (which may be influence of ashShaybani)

2. Muttasil Hadith

Muttasil Hadith is the Hadeeth wherein its chain of transmitters is continuous, meaning that there is no missing person anywhere in the chain.

3. Ijma'

He considered Ijma a source of legislation but only the ijma' of the sahabah.

His Position from other Usool of Fiqh

1. **Statements of the Companiions**
   If the statement was proven authentic, Imam AshShafi'e would consider it over Qiyas.

2. **Qiyas**
   He accepted Qiyas as a source of legislation but he did not extend this to accept the Iraqi school. He permitted the basic use of qiyas but not for judicial evasion.
3. **Istihsan**
   This is abandoning an established Qiyas for a preference that the Scholar has. Imam ashShafi'e did not accept this as he considered it an innovation. Imam ash-Sahfiee considered this an innovation.

Major References for the Shafi'ee Madhab

First: The statements of Imam ash-Shafi'ee

1. **Al Hujja Imam ashShafi'ee (Old Madhab)**: Only parts of this book can be found due to the book being lost, probably during the first sacking of Baghdad.

2. **Al Umm Imam AshShafi'ee (New Madhab)**: Arabs had a custom to use the word *Umm,* when they valued something to be most important.

3. **Sunan al Bayhaqi**: Imam Bayhaqi preserved Imam AshShafi'ee's madhab in this book.

Second: The Final Authentic Compilations

1. **Al-Majmmoo Shahr Al-Muhadhab an-Nawawi**: Two volumes written by Imam Syooti and then other scholars came to complete it.

2. **Fath al-'Azeez Sharh al-Wajeez ar-Rafi'i**: arRafi'I was considered a great authority of this madhab.

Prominent Fuqaaha of the Shafi'ee Madhab

1. **Abu Yaqoob al-Buwayti 231H/845CE**

2. **Isma'il ibn Yahya al-Muzani 264H/877CE**

3. **Ar-Rabee' ibn Sulayman al-Muradi 270H/883CE**

4. **Abul-Hasan Al-Ash'ari 334H/947CE**
   He is the famous imam who started the asha'ri ideology but he went back to the aqeedah of ahlul Sunnah wal jamah.

Spread of the Shafi'ee Madhab

Originally it started spreading from Egypt. The shia who prevailed over Egypt almost wiped out the Shafi'ee school of thought. This was the home of the madhab, until time of Ayoubi state, starting with Salaahudeen who was a strict Shaafi and Ash'ari. He pushed education and extended reign to Syria, so Shaafi school was spread there. Then when the Ottomans took over, the dominant madhab became the Hanafi madhab, until the Hanbali's came into Arabia. Islam came with the Shafi'ee merchants who spread it all the way down to South Africa, hence the spread of his madhab. Due to the debates in Iraq, the Shafi

school spread north to Dagestan, Azerbaijan. Yemenis took it to East and North Africa. Malaysia is considered the number one Muslim country following Imam Shafi'ee with almost 99% of the Muslims adhering to the Shafi'ee madhab. Leaders of AdDawlah Al Ghaznawi spread Imam Shafi'ee's madhab to Hijaaz, Iran and Central Asia.

Faqeeh Says…

Did you know that Imam ash-Shafi'ee was the first to write a book on the science of the principles of Fiqh, Usool al-Fiqh, which was his book ar-Risalah?

And did you know that he was the only Imam who left a written record of the Usool he followed in establishing his Fiqh?

IMAM AHL AS-SUNNAH
Ahmad ibn Hanbal
(164H-241H/778CE-855CE)

"Do not follow my opinion, neither follow the opinion of Malik, nor ash-Sharfi'ee, nor Awza'I, nor ath-Thawri, but take from where they took."
~ Imam Ahmad ibn Hanbal رحمه الله from I'lam al-Muqaqqi'een

قال علي بن المديني، رحمه الله:
"أن الله أعز الإسلام برجلين: أبي بكر يوم الردة و ابن حنبل يوم المحنة."
Verily, Allah has aided Islam by two men: Abu Bakr during the time of apostasy, and Ibn Hanbal during the time of the ordeal.
~ 'Ali ibn al-Madini

قال أبو زرعة، رحمه الله:
"إنه كان يحفظ ألف ألف حديث والذي له في المسند نحو ثلاثين ألف حديث."
He, Imam Ahmad, memorized one million Hadeeth, and the Hadeeth he included in his Musnad were around thirty thousand.
~ Abu Zur'ah

He memorized one million ahadith, not all were different, but each had a different narrator. It's a wonder he didn't mix up the narrators. Amongst those ahadith there were authentic ahadeeth, as well as weak and fabricated ones.

His Lineage

Ahmad ibn Hanbal AshShaybani; originally Arab.

His Early Life

His mother was traveling with his father when they were going on jihad towards the east and he was born in Maru, Khurasan. Then she took him back to Baghdad, which became home of the other Arab tribes as well. All of the Arabs would come with the Abbasids, to Baghdad. He grew up as an orphan and his mother raised him. It was reported that he was an intelligent child. She used to wake him up before fajr, get him ready and take him to the masjid. She would them come back later in the day to bng him back home. His early days built a strong resolve in him. He grew up in Baghdad, during the Golden Age of the Abbasid Dynasty. Part of the golden age was the big theological earthquake, from the time of Al-Mamun.

He survived the time of eight Abbassid Caliphates, living for 77 years.

1. *Al Mahdi*
2. *Al Hadi*
3. *Al Rashid.* He was sunni fighting the Mutazilah ideology.
4. *Al Ameen.* He was Mutazilah, but he did not enforce the Mutazilah ideology.
5. *Al Mamun.* He was Mutazilah, and he was the khalifah who started to enforce the Mutazilah ideology.
6. *Al Mu'tasim.* He was hardcore Mutazilah, and continued to enforce it on the people and the Ulema.

7. *Al Wathiq*. He was also hardcore Mutazilah, and continued to enforce it on the people and the Ulema.
8. *Al Mutawakil*. He went back to the aqeedah of Ahlul Sunnah wal Jamah.

His Shuyookh

Many of his shyookh are listed in his Musnad. He traveled extensively in the Muslim world because he was a muhaddith. He once traveled from Baghdad to Yemen just to meet Abdulrazaq al-san'aani but when he reached Makkah he heard that he had passed away.

- **Imam AshShafi'ee**: When he came to Iraq the second or third time, he met with Imam Ahmed. He said that ash-Shafi'ee was a great imam in fiqh even if he wasn't known for his quest for hadith.

- **Sufyan ibn 'Uyayna**

- **Muhammad ibn Zaid**

His Students

Mainly became scholars of hadith. Some of his students were related to him.

- His two children: **Abdullah** and **Salih** who were also narrators of his fiqh

- His wives, who were his students and also helped in passing on the knowledge after his demise.

His Character

His Ordeal

Mu'tazilah were getting stronger and stronger. They brought with them Eastern philosophy and opened the state to free intellectual thinking. Khalifah Ma'mun started *"Halaqat Tarjuma",* translation services, where everything including magic and witchcraft was translated. This had a negative influence on people.

Harun ar-Rashid had chosen for his children, Al-Amin and Al-Mamun, the most prominent scholars of his time. He himself was from Ahlul Sunnah Wal Jama'. Al-amin became mu'tazilli, but he didn't enforce al-I'tizal, whereas it was his brother Mamun, who enforced Mu'tazilah as the state ideology. There was a great resistance by the ulema but no one could stand the power of the state. There was a great breakdown in the manhaj of ahlul sunnah, many of them were jailed, beaten, and tortured. Ma'moon was one of scholars of his time, but it did not prevent him from being a fanatic in aqeedah. Imam Ahmed was caught in the middle. Most of the fuqaha just gave in to avoid persecution from the state but Imam Ahmed was steadfast. He became very prominent for his stance against the state. During Mamun's time, he was imprisoned for 28 months. He refused to accept the Mu'tazilah ideology. Mamun threatened to kill Imam Ahmad. During this time, he was bribed, treated kindly, threatened with the sword, etc. However, his popularity was so great, that he was not killed. If he had been killed, Mamun knew the people would revolt.

Mamun, who was in ashSham at the time of Imam Ahmed's imprisonment, called for Imam Ahmed to be brought in front of him. Imam Ahmed was carried on a camel in chains and shackles and on his way there news came that Al-mamun had died. AlMu'tasim, Mamun's son, was a hardcore Mu'tazilah. Al-waafi'ee also followed the example of his father. However, he loved Imam Ahmed and his personality, hence Imam Ahmed was released from prison but put under house arrest where he was not allowed to give fatwas. It was

Al Mu'tasim's son, al Mutawakkil, who renounced the Mu'tazilah ideology and freed Imam Ahmed from house arrest. The damage and blow to Ahlul Sunnah wal Jama' was so great that it was very hard and difficult to repair.

Imam Ahmed said those who helped him during his ordeal were ordinary people. After the first imprisonment, he was shaken. A bedoiun stopped him and said "everyone's watching what you are saying. So trust in Allah." This shows the immense responsibility on Imam Ahmed's head. He was imprisoned with people who had committed other crimes such as drinking, just to increase the mental pressure. He was so shaken before they were going to whip him that one of the drunkards told him, "don't worry it's just one or two whips and then you don't feel anything."

When some people told him to give in to the Mu'tazilah just to save himself, he said there are so many students who are ready to write what he would say. He could not say something wrong that will spread. Hence, he did not collapse to the beliefs of the Mu'tazilah because of the effect his opinion would have on the ummah. His words carried weight!

When Imam Ahmed was released from house arrest, the Khaleefah Mutawakil sent him many gifts. Imam Ahmed started crying and said "Inni akhafu min fitnatil ni'ma akthar min fitnatil Mihna," meaning, "I'm fearful of this fitnah more than the fitnah of prison". He did not want gifts because he wanted his reward to be from Allah and not from people. So in turn, he distributed his gifts.

Imam Ahmed became the "star" of his time, "the celebrity." He said that he wished he was not that popular and to just be a common person of his time.

His Death

He died in 241 H when he was 77 years old. It is said that all of Baghdad went to attend his funeral, 100,000 men and 60,000 women. They had never heard anything like that before.

THE USOOL OF MADHAB AHMAD

In general the principles of Madhab Ahmad are similar to the principles of Madhab his Shaykh AshShafi'ee.

1. Qur'an

Qur'an & Sunnah are of the same value to him.

2. Muttasil Hadeeth

Muttasil Hadith is the Hadeeth wherein its chain of transmitters is continuous, meaning that there is no missing person anywhere in the chain.

3. Statements of the Companions

4. Mursal Hadeeth

He accepted the Mursal hadeeth. A Mursal Hadeeth is a hadeeth attributed to the Prophet (peace be upon him) directly by a Tabi'ee in which the name of the sahabi is dropped from the chain of transmitters and deleted.

His Position from other Usool of Fiqh

1. **Ijma'**
   He denied qiyas, but accepted ijma' of the Sahaba as a relative source and not a source of legislation. He said it was almost impossible to collect ijma' from all of the fuqaha. Hence, the only ijma' that he agrees on is that of the companions. He said that anyone who claims ijma' after the sahabah is lying.

2. **Qiyas**
   He denied qiyas.

What is the position of the Hanbali Madhab amongst the four madhaahib?

- Was Imam Ahmed a Faqeeh? There was a debate about this, whether he should be considered a faqeeh or muhadith. He, himself, never claimed to be a Faqeeh. He scolded his students for writing down his rulings. He would only let them write down his Hadith.
  In the fiqh of Imam Ahmed, in one mas'ala he would have three or four riwayaat. That's a bit confusing but Imam Ahmed would answer differently based on circumstances. Some of the fuqaha were muhaditheen, however, it is disputable whether he was a Faqeeh or a Muhaddith. We consider him as a Muhaddith.

- Was Imam Ahmed the Faqeeh of Ahl alHadith? He is absolutely a faqeeh of Ahlul Hadith. We still have ulama who don't follow one school of thought. For example, Shaykh Albaani is considered Muhaddith of his time. He wasn't a faqeeh, but he was a faqeeh of Ahlul Hadith.

Major References for the Hanbali Madhab

First: The statements of Imam Ahmad

1) **Masa'il al-Imam Ahmad** (his son 'Abdullah): This is the most popular book.

Second: The Final Authentic Compilations

1) **Al-Mughnee Sharh Mukhatasar al-Khiraqi** *ibn Qudamah*: This is the most popular book of fiqh in all schools of thoughts. It's one of the great collections of opinions.

2) **Al-Insaf** *al-Mirdawi*: Exclusively for madhab of Imam Ahmad.

Prominent Fuqaaha of the Hanbali Madhab

1) **Salih ibn Imam Ahmad [266 H/879 CE]**

2) **'Abdullah ibn Imam Ahmad [290 H/903 CE]**

3) **'Umar ibn al-Husayn al-Khiraqi [334 H/947 CE]**: author of the matan that ibn Qudamah wrote to choose to expand.

Faqeeh Says…

Have you ever thought of the reason why there a small number of followers of the Hanbali Madhab in comparison to other Madhahib?

Spread of the Hanbali Madhab

It spread mainly in the Arabian Peninsula, AshSham, Palestine (on the northerm region of West Bank, Syria (Duma, near Damashq). There is a region in Afghanistan where they are Hanbali by origin.
Why didn't it spread out like the other Madhaahib? One of the reasons for the loss of territory and support of the Hanbali was because of the actual culture of the hanbalis, for their strict method or practice and for their strict nature in adhering to the Sunnah. That turned off many people. Al-Dhahabi mentioned that the hanbali made fitnah in Baghdad by amr bil ma'roof which enraged the khilafa of the Abbasids and they were expelled from Baghdad. Even now in Arab culture, if someone is strict, people say "don't be a hanbali".

And a Fifth Madhab…

THE DHAHIRI MADHAB
Imam Dawood ibn Ali
(200H-270H/815CE-883CE)

One of the official madhabs tolerated to be an authority on Islamic law. Dhahiri Madhab was confined to understanding the text literally without indulging in any rationalizing. They can be literalist in their approach, but some of their opinions can be taken. *See the matn, Al Muhallah which is also known as Al Mujallah.* The most famous of this madhab's scholar is Imam Ibn Hazm.

Example of some of the extreme literalism that some of the scholars had in this madhab:

- **Abu Huraira reported: the Messenger of Allah (may peace be upon him) said: "None amongst you should urinate in standing water, and then wash in it" (Muslim).** Dhahiris say if one urinates in a cup and then pours it in water, it is a different action, so this is ok to make wudu.

- **Al-Aswad narrated, I asked 'Aisha "How is the night prayer of the Prophet (Peace be upon him)?" She replied, "He used to sleep early at night and get up in its last part to pray, and then return to his bed. When the Muadh-dhin pronounced the Adhaan, he would get up. If he was in need of a bath, he would take it; otherwise he would perform ablution and then go out (for the prayer)." (alBukhari**). Dhahiris say this is a part of Fajr that must be done.

- In the Dhahiri madhab, praying in Jama'ah is fard. If one does not do so, then his salah is invalid.

The Biography of the Imam
He was born in Baghdad and studied with many scholars including AshShafi'ee. He was from Ahlul Hadith known for quest of hadith. When he started to shift from fiqh, he established his madhab. The way he started deducing fiqh rulings, established this madhab. He was the founder of this madhab but did not influence it as much as one of his followers, Ibn Hazm, did. He had some supporters in Baghdad who started fading but some traces of the madhab reached to the west including Al Andulus.

Principles of the Dhahiri Madhab
1. **Qur'an**
   Interpreted literally

2. **Sunnah**
   Interpreted literally

3. **Ijma'**

4. **Istishab**

Presumption of continuity; using for something that has no established rule. If something isn't in Qur'an or Sunnah, they would see what was done in pre-Islamic days. If that action wasn't condemned in Islam, they would follow it.

The Position of the Dhahiri Madhab

On other Usool of Fiqh:
They don't have one usool. Each case is studied independently, each hadith on its own and then a ruling is deduced for that particular case.

- **Qiyas:** The Dhahiri Madhab is very harsh against Qiyas. Imam ibn Hazm was very extreme in the refutation of Qiyas and especially the Hanafi Madhab.
- **Masalih Mursala:** Ibn Hazm regarded this as bid'ah.

On the other four madhaahib:
Ibn Hazm was pro ijtihaad. His followers were called Al-Hizmiyah. He warned against the culture of Madhabism though.

Major References for the Dhahiri Madhab

- The books of Imam ibn Hazm: (They aren't recommended for beginners at all).
- *Al Ihkam fi Usool al-Ahkam* in Usool al-Fiqh
- *Al-Muhalla bil A'athar* in Fiqh: It's a huge encyclopedia.

In Contemporary Time

Many of the contemporary scholars of ahl al-Hadith are called Dhahiri because they chose to use Hadith literally and truth be told, some fuqaha' of our time did in fact have some Dhahiri aspects in their rulings.

Faqeeh Says…

A consideration which is proper and harmonious with the objectives of the lawgiver, is that it secures a benefit or prevents a harm, but the Shari'ah provides no indication as to its validity or otherwise.

For example, the Companions decided to issue currency, to establish prisons and to impose a tax on agricultural lands despite the fact that no textual authority could be found for these measures.

THE REVOLUTIONIST FAQEEH
Imam Ibn Hazm Al Andalusee
(384H-456H/994CE-1064CE)

His Early Life

Born in Andalus, Spain. His great grandfather was Persian. He lived in the royal court of Umayyads. His father was minister of the royal court. He learned all Islamic Sciences from the women of the palace. He did not join male activities until his beard starting growing.

Ibn Hazm, the Minister

He became a minister of the Ummayyads 2 to 3 times. During his time the political arena was in turmoil between many rivals who were trying to take the rule over Qortoba. The Umayyads were trying to take back leadership from Banu Ibn Abi Umar. One of the Andalusee Khulafa tried to take power. There was no stability for some time. Each geographic locality was on its own. They had their own ameers.

His Works

Two books that were mentioned above.

His Revolution against the Fuqaha of his time

He was against the fuqaha of his time and spoke out against “madhabism,” meaning following any one particular school of thought. The fuqaha complained about him to the authorities and the authorities banned him from talking in public but he wanted to teach. He was independent of the four madhaahib. His books were burned in public court but he committed them all to memory and rewrote all of his books, which then survived until today. His reason for memorizing was so “if they destroy the papers, the knowledge is not in the papers, it is in my heart.”

Ibn ul Areef said about him, “The tongue of Ibn Hazm and the sword of Al-Hajjaj were indeed but twin brothers.” Because of his tongue, he got into a lot of trouble. Imam Dhahabi criticized him for his tongue but also mentioned how much he loved Ibn Hazm. He taught the virtue of ijtihaad and studying fiqh independently. People admired him for his character and his persistence of teaching and spreading knowledge but they also said that his tongue did not help him; he was very sharp. The reason for his harsh tongue could have been because of his Persian descent or because he had an ulcer.

His Contribution to Fiqh

He left a great legacy of ilm, which contributes to fiqh greatly until it became an official madhab. He was a source of fiqh for those who did not want to stick to one madhab.

The Shade of Ibn Hazm on Dhahiri

He was the one who organized the madhab. After his death, people had to admit that he was a great scholar of his time. He had written a book in every subject in Islam. He has a plethora of knowledge.

When Shaykh Yaser said he was rude, he did not mean he would curse, but when he would write, he would criticize the opinion of other scholars. He would use wording like “Those who claim themselves to be Hanafi” and “And some foolish say…”

Dhahiri Location

Part of Al Maghrib (No not AlMaghrib Institute, but referring to Morocco), Andalus and Baghdad.

Removal of Blame against the Notable Imams[1]

Faqeeh Says…

Have you ever wondered why the Imams disagreed on opinions of Fiqh when the source of Fiqh was only one? If the Hadeeth was Saheeh and it was there in Saheeh al–Bukhari, why then did they disagree over it? Couldn't they just tolerate differences of opinion and save us from this confusion?

Here is the answer for your questions.

Khilaaf & Ikhtilaf

Disagreement and Difference of opinion

Definition

The contradictions and opposition in opinions of the Fuquha.

The word khilaf خلاف comes from a tree in the desert. It is called a willow tree, which is a barren tree, it does not carry any fruit. This seems to indicate that Khilaf does not create any benefit.

Nature of Khilaf in Fiqh

- The default in fiqh discussions is to seek to arrive at an agreement. In books, they establish agreement, then discuss matters of disagreement (Ijma then Khilaf).
- Emotional arguments are not tolerated. We should be completely objective in matters of Fiqh. It's okay to have Khilaaf and it is allowed,

وَلَوْ شَآءَ رَبُّكَ لَجَعَلَ ٱلنَّاسَ أُمَّةً وَٰحِدَةً ۖ وَلَا يَزَالُونَ مُخْتَلِفِينَ

Allah says [in Surah Hud]: "And if your Lord had so willed, He could surely have made mankind one Ummah [nation or community (following one religion only i.e. Islâm)], but they will not cease to disagree" (alQur'an 11: 118)

- Some is considered blameworthy, some praiseworthy
  - Example of Praiseworthy – different interpretation of an ayah
- "Any khilaaf that leads or causes animosity, division, among the muslim ummah is blameworthy and not from Islam" ~ Ibn Taymiyyah
  - Reasons for hatred and animosity are caused by two things:
    -*Baghi:* transgression (which happens when things get personal)
    -*Lack of Sabr:* lack of patience from the other side. If the first party does not transgress and the second party shows patience, we would not have any problems in our ummah. You can apply this to

[1] The title of this chapter is exactly the title of a book authored by Shaykh al-Islam Ibn Taymiyyah on the very same topic.

any situation in our communities, even to family life. (i.e. when man transgresses and the woman doesn't show patience).

Categories of Khilaaf

- Acceptable vs unacceptable
  - 'Unacceptable' revolves around matters that are among the Ahkaam of Islam Example: Riba, or zina
- Diverse vs Contradictory
  - Diverse, both opinions are considered right and acceptable (For example, where you put your hands doesn't invalidate your salah)
  - Contradictory, is when there are two contradicting opinions one says halal and one says haram, and they cannot easily reconcile between both opinions. For example, according to Ibn Abbas, muta' is halal, however everyone else is of the opinion that it's haram.
- The default in fiqh is as much agreement as possible. If you open any book of fiqh, the first statement of any imam is that they show the stuff they agree on and then they start talking about matters of disagreement. Hence, one first establishes agreement and them moves on to disagreement. Defending oneself and making the other person's opinion seem wrong isn't correct.

Benefits of Khilaaf

- 'disagreement in my ummah is a mercy' [weak Hadith, but concept is valid]

The Reasons for Differences:

1. **Natural Differences:**
   - Human capacity of scholars, different levels of intelligence, knowledge, and devotion yield different results
   - Transgression was done by the later followers of the Madhab. In support of their madhab, they either followed their desires or gave a wrong opinion. Hence, during the time of stagnation, fiqh became a mere profession.

2. **Political Differences:**
   - During the time of stagnation, fiqh became a mere profession.
   - Schools were being established according to state preferences. For example, when Abu Yusuf was made a qadhi (judge), he appointed jurists who were of his madhab. The allegiance of some fuquha to these schools of thought would result in the differences of opinion.
   - Many people just wanted to be called imams. They were becoming more insincere and getting degrees in Islamic sciences for praise. Joke of Juhah: Juhah had a big Imama on his head and a man comes to him and asks many questions. Juhah does not know the answer to any of them. So, the man points out Juhah's big imama and how he doesn't know anything, so Juahah takes it off and puts it on that man's head and tells him to answer all those questions.

3. **Differences over hadith:**
   This is one of the most critical areas of difference. This happened due to the availability and validity of hadith.
   - *Availability of the hadeeth*

Not all the scholars were exposed to same hadiths and/or same amount of hadith. For example, Abu Hanifah lived in time in which the science of hadeeth was not established and he had nowhere near the number of hadeeth as Imam Ahmed.

- *Validity of these hadith.*
  - Area of Imam Abu Haneefah was troubled with much fitnah and many fabrications.
  - Hijazi area was safe though.
- *Some had conditions for accepting hadith*
  Some ulama' had conditions about accepting hadith, such as accepting of Mursal Hadith by Imam Ahmed.
- *Resolution of textual differences.*
  For example, when it is said to not pray 2 raka'at after asr if one comes into the masjid. How do we understand these two together? What takes precedence or the command? Or the direct commandment over the general prohibition? When it said to not pray after asr, does that mean one can't pray any prayer after asr, even if it has a reason? Imam Shafi'ee said if the prayer has a reason, you pray even if it has a prohibition. However, Imams Hanafi and Maliki are of the opinion that nothing should be prayed in that time. This may be the greatest source of difference between the Ulema

4. **Linguistic Causes:**
- *Over the ayaat and hadith of Prophet Muhammad (peace be upon him)*
  - For example, "Touching Women:" Allah says that the physical touch breaks wudu. Does that mean just touching or having actual intercourse? Those who interpret the ayah literally say it means the physical touch. Imam ash-Shafi'ee is of this opinion. However, only if the woman is non mehram. There is a story about a Shafi'ee man who was making tawaf with his hands covered with socks, trying not to touch women. A woman walks across and he tried to avoid her, but she comes up to him anyhow, touches his forehead and says "Gotcha Shafi'ee"
    -Those who interpret it metaphorically, say it means having intercourse → breaks wudu.
    -(In the Maliki madhab, touching a woman, who is mehram to a man, breaks wudu also.)
- *Grammatical Meaning:*
  - For example:

يَا أَيُّهَا الَّذِينَ آمَنُواْ إِذَا قُمْتُمْ إِلَى الصَّلاةِ فاغْسِلُواْ وُجُوهَكُمْ وَأَيْدِيَكُمْ إِلَى الْمَرَافِقِ وَامْسَحُواْ بِرُؤُوسِكُمْ وَأَرْجُلَكُمْ إِلَى الْكَعْبَينِ

Allah says, [in Surah al Ma'idah] "O you who believe ! When you intend to offer As-Salaah (the prayer), wash your faces and your hands (forearms) up to the elbows, rub (by passing wet hands over) your heads, and (wash) your feet up to the ankles" (alQur'an 5:6)

-There is a difference as to the interpretation of this ayah.
- *wam sa hu bi ru oo si kum',* wipe over your head, the letter 'bi' means 'with.' According to Imam AshShafi'ee, it means wiping part of your head
- *wa aydiyukum illal ma ra fiqh.'* Does the word 'illa' exclude elbows or not? There's a difference in opinion here also.

(The following was not discussed during the seminar but helps in understanding this point better)

During the last phrase "and (wash) your feet up to the ankles"

The idea that it meant 'wipe' came from **Imam Ibn Jarir al Tabari** *Rahimullah* (Which is one of the biggest *Mufasiroon* (Scholars of Tafseer) on Earth - some even say bigger than Ibn Katheer *Rahimullahu Taala)* ... Ibn Jarir held the opinion that the word *MasH* (in the ayah) meant 'wipe' and not 'wash' – In a lecture by Shaykh Ibn Ishaqq Al Huwany *Hafithahullah*, he explains as scholarly as he is he did not arrive in the correct opinion here, and the proof is the Sahih hadeeth:

…وَيْلٌ لِلأَعْقَابِ مِنْ النَّارِ …

Narrated by Abdullah ibn Amr *Rahimullah* who said The Prophet *SallahAllahu Aleyhi salam* stayed behind us on a journey and then caught up with us, and we were late in praying 'Asr. We started doing wudoo' and wiping our feet, and he called out at the top of his voice: "Woe to the heels* from the fire" two or three times. [Bukhari: 163 & Muslim: 241]

In another Narration by Abu Hurayrah *Rahimullah*: the Prophet *sallahAllahu Aleyhi wasalam* saw a man who had not washed his heels and he said, "Woe to the heels from the Fire." [Muslim 242]

5. **Differences over Juristic Methods:**
   - The use of qiyas or ar Ra'ee. The use of qiyas is done by Hanafis more than anyone else.
   - Al hayal
   - Ijma': Some scholars give preference to this type of method. Some confined it only up until the Sahabah.
   - Imam Malik took the customs of people of Madinah

Manners of the Imams:

See everything mentioned about their lives before.

The Position of the Student of Knowledge on the Imams:

As students of knowledge we should love all of the ulema for the Sake of Allah. Even if one differs with them in their opinion. We should love them just because of their service to the deen. When discussing their fiqh, we should do it with full respect, high regard and objectivity. When they are being attacked, we should defend their honor in the best way. If you have enough knowledge, then following the real madhab of those imams, the madhab of the Prophet of Allah (Peace and Blessings of Allah be upon him). For example, one issue in the Hanafi madhab is to raise the hands during salah. The hadith of Abdullah bin Masood, who said that the prophet (peace be upon him) would raise his hands only once in salah and never again. Abdullah ibn Umar's hadith relates that the Prophet (peace be upon him) did raise his hands for the ruku' for coming back for Ruku'. However, if you choose to follow Abu Hanifah as a muqalid and based on the fact that you don't have enough knowledge then that is deemed fine.

Stage Five

Era of the Four Madhahib

Madhab Rivalry (339H-656H/960CE-1258CE)

✓ Geographical and Political Preview

- **The Invasion of the Crusaders**



  After a sudden increase in religiosity in Europe, the Italians, French and English decided to attack the Muslims in order to conquer the Holy City of Jerusalem. This was the first time the Muslims met people from places like Italy and England. They were totally shocked and surprised by the invasion of these barbarians. The Muslims were not expecting an attack from Europe, much less an attack with such force and brutality that the Crusaders brought. The premise of this invasion was to rid the Holy Land, the birth place of their 'Savior', of the 'Infidels' who had no right to the land. The suddenness and impact of this invasion has many similarities to the event on 9/11. The Crusaders terrorized the entire area killing any and everyone they felt like, be he/she Muslim, Jew or Christian.

  At the beginning of the invasion the Muslims were so surprised that they did not know how to respond, should they fight back or try diplomacy? After observing the atrocities of the invaders they had no choice but to fight back and defend the land and lives of the Muslims as well as the Jews from these barbarians. The conflict lasted for many years and it was not until Salahuddin Ayyubi that the Crusaders were successfully driven out of Jerusalem.

- **The decline of the 'Abbasids Khilafah**

  It was during this period that the 'Abbasid Khilafah started a gradual downward spiral. They had lost much of the power and influence that they once had. This spiral only ended with their total defeat at the hands of the Mongols.

- **The Mongols and the sacking of Baghdad**

  Two Shi'aite Ministers of the 'Abbasids, Abu Ja'far At-Toosi and Ibn Alqamah invited the Mongols to destroy the 'Abbasid government. When they entered Baghdad they destroyed everything in their path. They demolished houses and burnt libraries. They had no respect for knowledge or the people of knowledge. Baghdad at that time was the center for learning and housed many libraries with the works of many of our great Scholars. The Mongols threw millions of these works into the river just so that they could cross to the other side. It was said that for months the banks of the river was stained with the ink from these books. This was one of the single greatest lost for the Muslims. Many of our great works were lost to us forever.

  This was the end of the 'Abbasid Khilafah. Unlike the Ummayads who managed to extend their reign by moving west, the 'Abbasid could not revive their Dynasty. This loss meant that there was no more

Khilafah. This caused great turmoil in the Muslim world. Many groups tried to establish the Khilafah in their localities. One of these groups was the Mamlukes who were former slaves of the Kings of Egypt.

✓ Characteristics of this Stage

1. **Political turbulence and disorder of the Islamic State**
   Because of the loss of the Islamic State many political factions vied for the Khilafah. This resulted in a very difficult period for the Muslims. Two of the major competitors for the Khilafah were the Ayyubis in Egypt and the Mongols who later became the Ottomans.
   There were not only political conflicts but ideological ones as well. The Murabitun who was Ahl As-Sunnah in Ideology was defeated by the Muwahhidun whose beliefs were close to that of the Mu'tazillah.
   Because of these problems no attention was paid to Fiqh and its development.

2. **Preoccupation with the external invasions**
   There were not only internal problems but the invasions of the Crusaders and the Mongols as well. The lands of the Muslims needed to be protected so the Ulema did not have much time to devote to the development of Fiqh and Islamic Law.

3. **Widespread debate and polemic (Munadhrat)**
   Instead of dedicating their time and efforts to learn knowledge independently, followers of a madhab started debating with each other to find out whose madhab was the best or most applicable or closest to the Sunnah, etc. They developed methods and strategies to defeat their opponents. These Munadhrat or debates were considered as 'Istilaan' or 'Combats'. Books were even written on how to effectively defeat someone from a different Madhab.

4. **Discovery of writing material (paper)**
   It was in this period that the Muslims made it all the way to China. Here they learnt the art of paper making and took it all the way to Spain. This technology had a significant impact on the Muslims. It was now very easy to write and compile many books. The Muslims started a revolution in writing. This technology was much better than the bulky leather that they used to write on before.

5. **Emergence of Factionalism**
   The Muslims became divided into many groups of different types. Some were based on theology while others on Fiqh. Every group believed that they were the only correct group and so there was much arguments and debates between the different factions.
   The Madhabs also participated in this factionalism. It led to very aggressive arguments between followers of different Madhab.

6. **Drastic reduction in the number of Madhab**
   There were many different Madhahib before this time. We can count 13 that were prevalent. During this time however the number reduced to only 4. This was because of the strength of the followers of these four Madhaahib in argumentation and providing proofs. After a short while the Dhaahiri madhab was revived as a fifth Madhab. Today it is only these 5 madhahib that are alive.

7. **The Madhahib reach their final form of systemization and organization**

Each Madhab started organizing their opinions into a systematic format. This is the format that we have with us today.
Imam Ahmad's opinions were not initially considered as a Madhab but in this period his students and followers started forming it into a Madhab.

8. **Emergence of Comparative Fiqh**
Because of the constant debates between the Madhahib many scholars wrote books comparing their Madhab with the others. Many proofs and arguments were provided that still help us to understand the different Madhahib.

✓ Factors affecting Fiqh

1. **Promotion of individual Madhahib**
Followers of a Madhab stopped searching for knowledge by itself and focused on the opinions of their own Madhab. They then promoted their own Madhab instead of the general acquisition of knowledge. There was no more objective look at knowledge but everything was looked at through the glasses of their own Madhab.

2. **Compilation of encyclopedic works on the support of individual Madhahib**
The Imams of certain madhab would confine themselves to that madhab and would do anything to prove their madhab. In this regard they spent much time trying to find evidences to support their own Madhab.

3. **Widespread use of hypothetical Fiqh**
Since many of the questions of the people were answered now, they started asking what-if questions. The reasons that they give for coming up with these hypothetical questions were that they were doing it for practice, mental exercises, and intellectual pleasure. This method was used to train students on how to use the principles that they had learnt. This methodology was severely criticized by the Ahl al-Hadith.

4. **Disregard of independent Ijtihad for Ijtihad Madhabi (based upon the established principles of a particular Madhab)**
The scholars started calling for the closure of the door of Ijtihad. They believed that the level of the Scholars was so low that there was no one that was qualified to make Ijtihad on his own. They promoted the following of a specific Madhab and the use of the Usools of that Madhab to come up with rulings on new situations.

5. **Evolution of the classical and traditional form of writing books of Fiqh**
As the quality of the students had decreased they were not able and willing to study the huge works of Fiqh written by their Scholars. They asked their scholars to summarize these Mutawwilaat into shorter versions called Matn.

6. **The loss of the great libraries of Baghdad**
Many of the Mutoon would reference books that do not exist anymore because of the sacking of Baghdad. The original studies of the Madhahib were lost to us forever.

✓ Role of the Scholars in this Stage

1. **Studying their individual Madhahib, reasoning its particular rulings and deducing its principles.**
   The Scholars of a particular Madhab would focus solely on their own Madhab trying to understand and derive the Usool based on the rulings of the major Scholars of their Madhab. This helped to solidify and clarify the positions of each Madhab.

2. **Favoring one opinion in a particular Madhab over the other in the same Madhab, this is known as Tarjeeh.**
   In every Madhab there would be differences of opinions. The scholars would look at their madhab and determine which opinion should be the final opinion of the Madhab based on the Usools derived from their study of other rules. This resulted in much infighting in the Madhahib.
   It was necessary to define the terms used in a Madhab so that everyone came understand what is meant when a specific word of phrase is used. There were many differences between the Madhahib in the definition of certain terms and phrases. The most common example is the definition of Wajib. The Hanafi Madhab defines it as an act in which there is a difference of opinion from the scholars as to if it is Fard or not, like Witr. The other Madhahib define Wajid as the same as Fard. Other terms used were Ashaabuna, referring to the followers of the Madhab and Riwaayah, referring to the statements of the Imam of their Madhab.

3. **The advocacy of Madhabism.**
   It was in this stage that Scholars called for the following of only one Madhab. They did not look favorably on those people who refused to adhere to any of the Madhahib. The division of the Ummah based on Madhab was so rampant that there would be four Judges, one from each Madhab. A person would only allow the Judge from his Madhab to rule on his case.

Faqeeh says…

1. *A man once asked Imam Abu Haneefah a question, and upon receiving the answer he said to the Imam, "This is what you have just said; is it the absolute truth with no doubt in it?" The Imam replied, "By Allah, I have no idea. It might even be the falsehood which has no truth in it."*
2. *Comparative Fiqh is the science of Fiqh which studies the Fiqh issues in light of different Madhahib and their approaches to it, comparing between their evidences weighing their proofs and concluding by selecting one of the discussed opinion regardless of the Madhab supports it.*
3. *Madhabism is a fabricated English term in order to compare it to the Arabic term Madhabiyyah. Madhabiyyah is the advocacy of Madhahib, adhering to one of them, it's the promotion and practice of Taqleed in Fiqh and following blindly.*

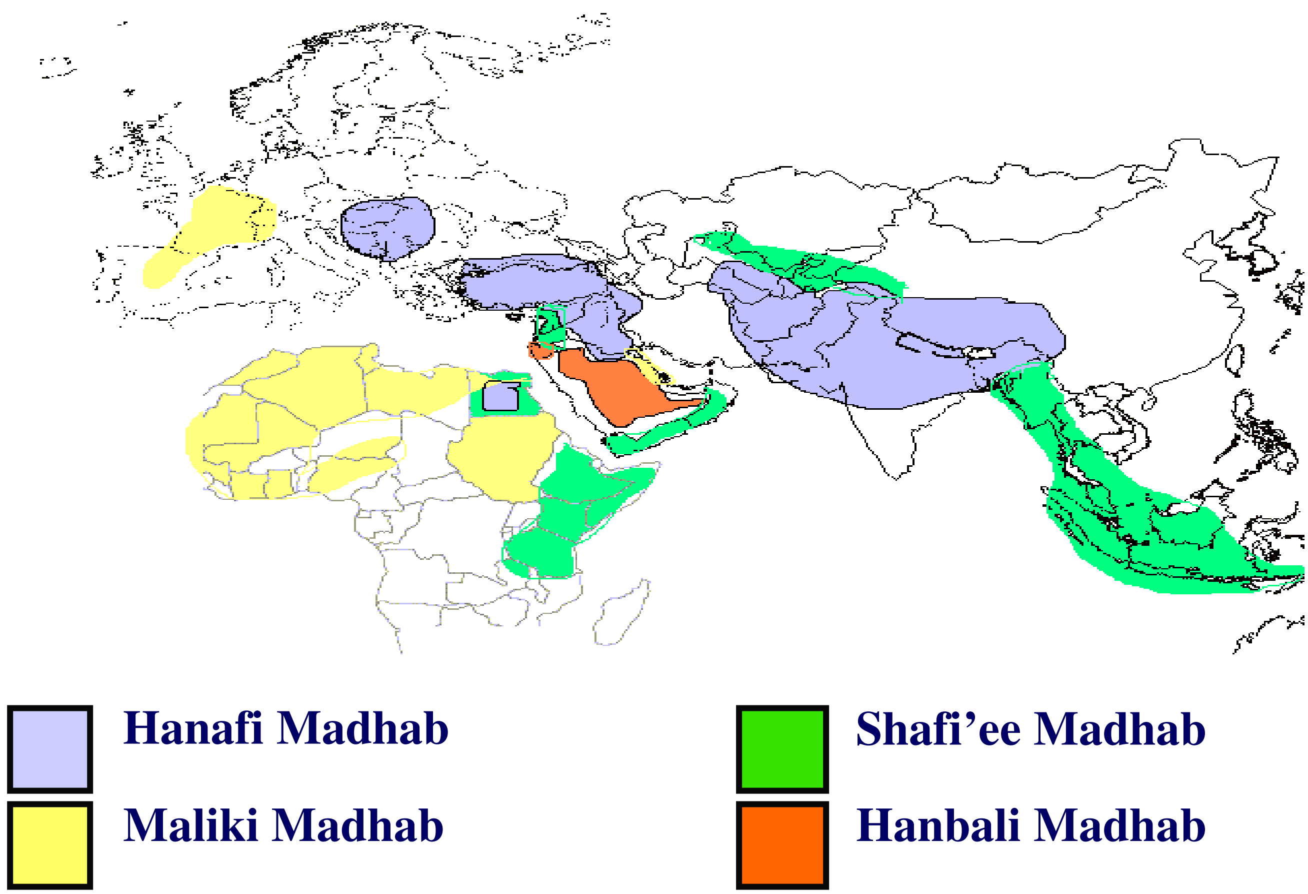
✓ Prominent Fuqaha' of the Stage:

Madhab	Fuqaha'
Hanafi Madhab	1. **ar-Razi al-Jassas - 370H/980CE** Authored Ahkam al-Qur'an and a book on the Usool of this Madhab 2. **Abul-Hassan al-Qudoori - 438H/1046CE** 3. **Ali ibn Muhammad al-Bazdawi - 482H/1089CE** Wrote a book on Usool 4. **Shams al-A'immah Muhammad ibn Ahmad as-Sarkhasi ~ 500H/1106CE** 5. **Abu Hafs 'Umar ibn Muhammad an-Nasafi - 537H/1143CE** Wrote Tafsir An-Nasafi 6. **Ali ibn Abi Abdul Jalil al-Mirghinani - 593H/1209CE**
Maliki Madhab	1. **Abu Muhammad Qasim Ibn Asbagh - 340H/950CE** 2. **Abu Bakr al-Baqillanee - 403H/1103CE** Was 'Ashari but considered as one of the great Imams of this Madhab. *Went to the Court of a Christian King to debate with a priest. When he met the priest he asked him how his wife and children were. The King was embarrassed and wanted to know if he didn't know that Priests don't have wives and kids. Al-Baqillanee then retorted how can you negate a wife and kids from your priests and then attribute it to Allah.* 3. **Abu 'Umar Yusuf ibn Abdul-Bar - 463H/1163CE** 4. **Abul-Waleed al-Baji - 474H/1174CE** 5. **Abul-Waleed Muhammad ibn Ahmad ibn Muhammad ibn Ahmad ibn Rushd (the Grandson) - 595H/1199CE** Was the Grandson of the famous philosopher. Abul-Waleed however was a great Faqih. 6. **Abu 'Amr 'Uthman ibn Abi Bakr ibnul-Hajib - 646H/1248CE** Wrote a book on Usool.
Shafi'ee Madhab	1. **Isma'il ibn Yahya al-Muzani - 364H/974CE** 2. **ar-Rabi'ee ibn Sulayman al-Murdai - 370H/978CE** 3. **Abu Bakr Ahmad ibn al-Husayn al-Bayhaqi - 458H/1066CE** 4. **Imam al-Haramayn Abul-Ma'ali Abdul-Malik al-Juwayni - 478H/1086CE** Was called this because he led Salah in both Makkah and Medinah. 5. **Abu Hamid al-Ghazali - 505H/1111CE** 6. **al-Hafiz Ibn Asakir - 571H/1177CE** 7. **Abul Qasim ar-Rafi'e - 623H/1226CE** 8. **Abu 'Amr 'Uthman ibn as-Salah - 643H/1245CE** Wrote a book on the Sciences of Hadith
Hanbali Madhab	1. **al-Qadi Abu Ya'ala - 334H/945CE** 2. **Abu Ishaq Ibn Shaqila - 391H/1001CE** 3. **Abu Ali Al-Hasan ibn Shihab al-Ukburi - 428H/1038CE** 4. **Abul-Wafa' Ali ibn Aqeel - 513H/1119CE** Considered the authority of Arabic grammar. He wrote a commentary of the poem on Arabic grammar. 5. **The Minster Abul-Mudhaffar Yahya ibn Muhammad ibn Hubayrah - 560H/1166CE** 6. **Abul-Faraj Abdur-Rahman ibn al-Jawzi - 597H/1200CE**

	Wrote Tablees Iblees and known for his books on heart softener. **7. Muqaffaq ad-Deen Ibn Qudamah al-Maqdisi - 620H/1223CE** **8. Abul-Barakat Majd ad-Deen Abdus-Salam ibn Taymiyyah (the Grandfather) - 652H/1255CE** He was the Grandfather of Ibn Taymiyyah

Faqeeh says…

1. *Again, above is a list of more scholars to learn about. When you open any book of Fiqh, especially the books of comparative Fiqh, you'll definitely come across many of these names.*



The Ethics of Disagreement

✓ The Golden Rules of Disagreement

1. **Learn that the Infallible are only 3:**
    1. **The Qur'an**
    2. **The Sunnah**
    3. **Ijma' of the Sahaabah**

    It is therefore important to know that humans are fallible. The scholars are like everyone else and can make mistakes and errors.

2. **There is no ikhtilaf in matters that are well established in the Shariah**, such as the ruling on paying zakat. It is however permissible in matters of Ijtihad.

3. **If there is an ikhtilaf then look at it as mercy from Allah.** This does not mean that we should initiate ikhtilaf to gain the mercy of Allah but if ikhtilaaf occurs, and it will, then consider it as a mercy from Allah.

4. **The obligation of the believer is to seek the Haqq that is apparent to you.** Taqleed can be the Haqq seen by a person if he believes that this is his way to less confusion.

5. **One cannot ban the discussion of another opinion.** It is the right of everyone to discuss his/her own opinion.

6. **Amr bil Ma'ruf and Nahi an'il Munkar is an obligation on every person.** Everyone is responsible for enjoining the good and forbidding the evil. If someone is doing something that is clearly Haraam then it is incumbent on the person who knows to forbid this act in a wise manner.

✓ The Golden Ethics of Disagreement

1. **Identify the terminology** – in discussing Fiqh different Madhab use different terminologies. Even the simplest term needs to be clarified.

2. **Identify the Sources** – Are we using Madhab alone or Qur'an and Sunnah?

3. **Always verify the narrations** – whether it is Hadith, an Imam, the Madhab or any other type of narrations. On your own side, make sure that you quote the correct statement or opinion of your source. Judging Hadith is the hardest thing to come to an agreement on because most of us have to do taqleed to a Muhaddith since we do not have the knowledge of Hadith.
    Some of the headings of the chapters of Bukhari are not authentic and he never claimed that these Hadith are authentic. The authentic Hadith are the ones that he mentioned in the body of his book.
    It is clear that weak Hadith cannot be used to obtain a principle.
    It is disputable whether we are allowed to use weak Hadith for fadaail. However, many of the Scholars say that we are not allowed to use these because they are ample authentic Hadith for al-Fadaail.

4. **Do not judge intentions but judge statements** – Do not go beyond the statements that are made. If you start judging intentions you will look down on the person.

5. **Before a starting the discussion find common grounds –** Start by giving the agreements between your scholars. The Fuqahaa would always start discussions by mentioning the Ijma' of their scholars and then mention the Ikhtilaaf. If you begin with Ikhtilaaf then you might end up making Ikhtilaaf in issues where there is Ijma'.

6. **Have the intention to find the truth –** Imam ash-Shafi'ee would say: "I have never argued with a person except that I have prayed that Allah reveal the truth on his tongue." Our discussions should not be to defeat the other person. If this is our intention we will not achieve any good.

7. **Always keep a margin of error on your side that your argument might be wrong –** If you come into an argument thinking that you are absolutely right then the discussion will get nowhere.
Imam Ash-Shafi'ee said "My position is correct with the possibility of being wrong and yours is wrong with the possibility of being right."

8. **Give the person a chance to reply to your statements –** do not argue just for arguing sake. Do not interrupt just because you are losing the argument.

9. **Always bring the discussion back on track –** discussion can go all over the place. If you are serious and sincere about this discussion then don't get into personal attacks.

10. **Be united on the principle of unity of the Ummah and the permissibility of differences in the religion –** by the Blessings and Mercy of Allah it is allowed for us to have differences of opinions on certain issues. It is however, not allowed that we break the unity of the Ummah because of these differences. The Sahaabahs had many differences of opinions but they still loved each other and prayed behind each other.

11. "If you argue with the ignorant he will defeat you." – Imam Ash-Shafi'ee. However **if you feel that the person is ignorant then don't offend the person by saying or hinting that he is ignorant.** You should stop talking to them for fear that they will reserve their place in Jahannam by the statements that they make.

The Prophet said: "I guarantee a house in the outskirts of Paradise to the one who gives up arguing even though he is correct" (Abu Dawood).

> *"Knowledge is the span of three hands: The person who is in the first hand this he knows everything and becomes arrogant, the person who enters the second span becomes humble because of his lack of knowledge and the person who enters the third span knows how that he knows nothing." – Sufyan at-Thawri.*

✓ The Golden Tips for after a Disagreement

1. **Always find an excuse for your opponent** – In many cases arguments get very heated and people might say things that they do not mean. Find an excuse for the mistakes that your brother/sister made in their arguments or manners.

2. **Maintain the spirit of brotherhood or sisterhood** – at the end of the discussion always part on good terms. Make sincere du'a for each other. Hug and leave with a smile. Remember he/she is a part of your Ummah therefore a part of you.

3. **There should be no labeling, accusations or name-callings** – In many discussions people end up calling each other names and hurtful titles. Remember to call someone a Munafiq is even worse than calling them a Kafir.

4. **Know that enforcing your opinion on others is not possible** – It is not possible to force someone to accept your opinion. And if they do not that does not make them a kafir or a munafiq or someone that follows their desires. Everyone one has a right to follow his own opinion. He can stick to his own opinion just as you are sticking to yours. If you are sincere in trying to guide him then make du'a to Allah, the One who Guides, and He will guide him, inshallah.

5. **Always remember to respect our Notable Imams from both the past and the present** – The Scholars have done much for this deen and we are not in a position to disrespect any of them**.**
   The Prophet said: "He is not of us who does not show mercy to the youth and respect to the elders and knows the rights of the scholars." (Reported by At-Tirmidhi)

Faqheeh says…

Ibn 'Abbas said,

Do not speak of a matter if the matter isn't yours, until you find therein a place for your words. Do not argue with a foolish or with a forbearing, for the forbearing will defeat you and the foolish will despise you.
Never mention your [Muslim] brother in his absence with anything other than what you would like him to mention you with in your absence.
When you do something, do it in the manner of someone you knows for a surety will be rewarded for his righteousness and be taken for his faults.

Stage 6

Era of Taqleed (blind following)

Stagnation and Decline (656H-1342H/1258CE-1924CE)

Geographical and Political Preview

This stage started when the Mongols entered Baghdad in 656H and it went all the way until recent times; therefore, this is the longest stage in the history of Islamic Law, and it is divided into three periods.

In 656H / 1258CE, the Mongols invaded the Muslim lands, sacked Baghdad, and completely destroyed the Abbasid Khilafah. Thus, the Muslims lost the universal leadership and were now reduced to various smaller states. Until this time, the central Khilafah had always been in the hands of the Arabs, beginning with The Prophet (Peace Be Upon Him) and the Sahabah, and then continuing with the Umayyads, the Abbasids and even in Al-Andalus. After the downfall of the Abbasid Khilafah, other ethnicities and groups started vying to claim the Khilafah even though RasulAllah sal Allahu alayhi wa Sallam said, “leadership should remain in the hands of the Quraysh”

This was mandated in order to ensure that the hearts of the Muslims would be together, because the Arabs would only submit to the Quraysh, and therefore, the Muslims would be able to gather around Qurayshi leadership. Now, if people from Arab countries and ethnicities want support, they refer to themselves as Sayyids, the Ashrafs: meaning close in relationship to The Prophet (Peace Be Upon Him); from his lineage. When an individual is recognized as being a Sayyid, people are inclined to provide great support, even blindly. By following one who is believed to be related to the Prophet, the people are comforted and have a sense of security, peace and acceptance.

Today, there are movements in the world that claim that if there were one Khalifah all the problems of the Muslims would be solved. However, the concept of one Khilafah was gone since the assassination of Uthman. Since the time of Uthman, there has always been two or more individuals claiming the Khilafah but even though the Muslims had more than one state, they always acknowledged the Khalifah in Baghdad until its collapse. Although establishing the Khilafa is something we should strive for, there are doubts as to whether it is even possible to establish a Khilafah before the Day of Judgment. Even when the Mahdi comes to lead the believers, the goal of establishing the Khilafah may not materialize, although our ummah will follow him. Therefore, although Khilafah is something we should seek, it should not be our only concern as Muslims, nor will it necessarily solve all of our problems.

First Period:
From the sacking of Baghdad until the fall of Muslim Spain
656H – 897H / 1258CE – 1491CE

- **Political Disorder**
  This period was marked by great political disorder and instability. The Muslims were fighting for power; for the Khilafah. This situation resembled the time when the Attaturk Khilafah was cancelled in 1926CE; political disorder was rampant and the central universal leadership was lost. After the cancellation of the Attaturk Khilafah, the Muslims started fighting for Khilafah, specifically two groups: Al-Saud in Saudia Arabia and the Hashmiyin in Jordan and Iraq. The great-great-grandfather of the crown prince of Jordan eventually announced himself as the Khalifah, and then more fighting erupted.

  Although the Muslims did not have complete consensus on one Khalifah since the assassination of Uthman, the widespread political turmoil across the Muslim lands distinguished this first period from all other circumstances the Muslims had previously known.

  Muslims lost Spain in 1492CE when the kingdom of Grenada was surrendered to King Ferdinand and Queen Isabella. However, it took centuries for Muslims to disappear from Spain. In this stage, forced conversions to Christianity took place so the Muslims had to practice Islam in secret; this greatly affected the Fiqh in this region. Then, in 1614, there was a massive expulsion of more than 300,000 Muslims from Spain to North Africa where they were received as refugees.

  In this period, the Ottomans emerged as a new state in the east. When they became Muslim, the Ottomans wanted to contribute to the Muslim land so they started going North towards Central Asia, the Russian areas, Turkey, and Europe. They eventually conquered Constantinople as well as the state of the Church. The Mamluk state also emerged in Egypt at the same time and wanted to take the Khilafah. They began fighting the Ottomans in ash-Sham, but eventually lost.

  Also, in Iran, after the king became Shi'a, he enforced the Shi'a doctrine on Iranians in the region. This created more political disorder between the Ottomans in the North and the Shi'a in the South, and it kept the 'ulema' occupied with recruiting support for the Ottomans against the Shi'ite threat.

- **Eruption of domestic wars and Decentralization of the State**
  In North Africa, many of the smaller Islamic states were fighting each other. One such state was Al-Murabiteen. The Umayyads began losing power in Spain, and small principalities called at-Tawa'if started forming. Then, at-Tawa'if started fighting against each other in an effort to establish one universal rule in Spain. Some of at-Tawa'if tried to seek help from Al-Murabiteen.

  Al-Murabiteen was a rising Islamic state in Morocco. Morocco was in North Africa and directly south of Spain. Al-Murabiteen who were Sunni and possibly Ahl al-Hadeeth, tried to help the Muslims in Spain and prevent them from being wiped away. Yusuf ibn Tashfeen was the leader of the Murabiteen at the time. As-Saahib ibn Abbad was the leader of Southeast Spain and he had called on Ibn Tashfeen for help. His ministers warned him that Ibn Tashfeen might love the land so much that he would not want to leave. Ibn Tashfeen replied:

  راعي الإبل خيرا من راعي الخنازير
  "To breed camel (for Ibn Tashfeen) is much more better than to breed pigs (for the Christians from the North)"[1]

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[1] http://www.hewad.org/viewtopic.php?t=885&sid=901d1e5856691fb9ef54c20aed1079d7

Yusuf ibn Tashfeen fought the Christians in Spain and was successful in holding the Christians back for some time. He did leave Spain to go back to North Africa but later he came back to fight again and succeeded in wiping out all the principalities and creating an extension of Al-Murabiteen in Al-Andalus. This lasted for decades until Al-Muwahhideed from the Berber came and took power from Al-Murabiteen in North Africa and thus Spain. Al-Muwahhideen had some deviant beliefs, but they were able to rule Spain for another 200 years until they lost to the Christians from the North. The Muslims were then pushed further and further south to one small place, Grenada, until they finally lost Grenada in 1492 CE and were eventually removed from Al-Andalus. Until this day, if you go to the museums in Madrid, you will see banners of Al-Muwahhideen for when they lost the battle. The defeat of Al-Muwahhideen marked a radical change for the remnants of Muslims that remained in Spain.

Muslims in Spain were persecuted to force them to convert to Christianity, and efforts were made to prevent them from practicing their religion. In response to these changing conditions, Andalusi Fiqh changed drastically; for example, the Fuqaha' declared that just looking at the wall would be enough for tayammum and that Salaah could even be performed while walking in the marketplace, if the intention was there. When the Muslims in Spain eventually lost contact with the outside world they essentially went underground in order to preserve their culture and faith. A new language even evolved; al-Ajamiyyah. This language consisted of writing Spanish with the Arabic letters. However, when the Muslims were wiped out completely, this language was lost as well.

Second Period:

From the conquest of Constantinople until the start of the European invasion
857H-1214H/1453CE-Around 1800CE

- **The rise of the Ottoman Empire**
  Although, the Muslims lost Spain by this period, they were gaining ground in the east: Europe. During this period, the Ottomans had gained power and were the strongest among the Muslims so they started expanding into Europe, coming from the east and proceeding westward. It seemed as though the Ottomans were trying to reach Spain to provide aid to the Muslims but were not able to do so. The Mamluks did not want conflict with Spain while fighting the Ottomans, so they established a peace treaty with Spain and concentrated their efforts on fighting the Ottomans.



  There was a fatwa given from North Africa that instructed the Muslims to leave Spain. However, Muslims were prevented from leaving Spain by the ruling body. This spawned the birth of piracy. The first pirates were Muslims and their goal was to extradite Muslims who were banned from leaving Spain. In one night, Muslim pirates from North Africa went to Valencia in South Spain and helped over 700 Muslims families escape. The pirates also tried to regain what they lost in Spain. These pirates are contrary to the predominant view people have of pirates today.

- **The Mamluk state of Egypt**

The Ottomans eventually defeated the Mamluk state and thereafter announced themselves as the central Khilafah. Although the Europeans referred to the Ottoman expansion as "Ottoman Imperialism" and as an empire occupying the Muslim lands, this was an attempt to portray the Ottomans as pressuring the Arabs, and as an occupying force. In actuality, this is far removed from the truth.

- **The Launch of the European Expeditions**
  The Europeans wanted to get to the wealth of the Muslims in India and China; however, they wanted to avoid going through Muslim lands (i.e. using the Silk Route) because this required the Europeans to pay taxes which were of great benefit to the Muslims.

  Columbus proposed that the earth was round and requested support to make an expedition around the world. This was initially rejected by many Europeans who thought that the earth was flat. However, Columbus managed to convince Isabella and Ferdinand. Most of Columbus' crew comprised of Moors (Muslim inhabitants of the western Mediterranean and Western Sahara) because Muslims did not believe that the world was flat as did the Europeans. Muslims have known the world was round long before Columbus because of what Allah subhaanahu wa ta'aala says in the Qur'an.

  Eventually, Columbus reached America, "discovered" the New World, and called the inhabitants "Indians" because he thought he had reached India.

  The Europeans also tried to find water routes to India. They tried to go around Africa and as they proceeded, they established colonies along the Atlantic water route. Vasco Da Gama found Ibn Majid at the Cape of Africa, and Ibn Majid helped Da Gama get to India- Ibn Majid provided assistance simply for the purpose of sharing knowledge. With the establishment of the colonies, the European expedition started so that they may secure the routes to India and other places.

  When the Europeans founded the Suez Canal, they started taking advantage of it by going around the world and coming to the Muslim world from the other side. Although the Europeans had avoided the Muslim lands for a long time, they eventually were able to gain control of the Mediterranean after the Ottomans lost to the Europeans.

The Third period:

From the beginning of European colonialism until the fall of the Islamic Khilafah
1214H-1342H/1800CE-1924CE

- **The European colonialism era**
  In this period, the Ottoman's began to lose power and the Europeans became the strongest power in the world so they started to go after the weak nations and eventually took over the Muslim countries. The Muslim lands were ripped apart one by one until the central Khilafah was taken.

  Indonesia was occupied by the Europeans for 300 years, and many other Muslim countries were also occupied for years, but the Europeans could not take the Khilafah. Once the Muslim rule was ripped from the Central Khilafah, the Euorpeans jumped on Turkey during the First World War. Then they proceeded to attack the Muslim lands from all sides: Africa, Philippines, etc.

- **The First World War and the Fall of the Ottoman Empire**

During the First World War, the Ottomans allied with the Germans and Italians but they lost to the Europeans. After the war, France and England came together and divided the Muslim lands with a pen and a ruler; all natural/ethnical borders were disregarded. This created a lot of division among Muslims who, to this day, are fighting over borders; for example Yemen and Saudia Arabia, Qatar and Yemen, Egypt and Sudan, etc.



The Muslim world today

Characteristics of this Stage

1. **Emergence of Taqleed**
The ‘ulema’ of this time promoted Taqleed, which can be translated as blind following. The Muslims were prohibited from digressing from any of the four schools of thought, and it was made almost obligatory on the Muslims to follow one particular madhab. The people were also prohibited from leaving their school of thought. It even became a culture for the students of knowledge, Imams, Muftis, ‘ulema’ etc.

2. **Emergence of Madhab Sectarianism**
Due to the excessive emphasis placed on the madhahib, people began to treat other madhahib as sects rather than valid schools of thought. The Madhahib were no longer an issue of Fiqh, instead they became a matter of ‘aqeedah. This sentiment was reflected in the court systems of the time, where four judges would be assigned – one for each madhab. At the end of this stage, the situation digressed so far that four adhans and iqamahs would be called – again, one for each madhab. Even khutbah al-Jumu’ah would be performed four times by four different imams.

Some books took such an extreme stance with regards to the madhahib that they addressed questions such as whether a Hanafi man was able to marry a Shafi’ee woman. The answer to this question was derived using qiyas an ahl al-kitab i.e. it is okay for men to marry from the women of the People of the Book therefore it is okay for a Hanafi man to marry a Shafi’ee woman.

The loss of Iran to the Shi’a was due to madhabi issues as well. The King of Iran divorced his wife three times in one session, which by the consensus of the four madhahib was a final divorce, and thus, he would not be allowed to marry her again unless she remarries another man then divorces him. However, the king

wanted to marry his wife again. Some of his ministers who were Shi'a suggested that the king consult the Ja'fari imam. The king consulted the Ja'fari imam who told him that the divorce was not final. After learning this, the king decided to convert to Ja'fari Shi'ism so that he could remarry his wife. Because of his power, he then proceeded to force the rest of the state to convert to Shi'a as well. Madhab sectarian violence thus erupted. The Sunnis were against the Shi'a and they almost exterminated the existence of the Shi'a for some time. Many Sunni Muslims fled towards the borders of Iran to escape the forced conversion and sectarian violence. Even today, the Sunni Muslims of Iran reside mainly towards the Iranian borders. Then Hanafi and Shafi'ee started fighting each other until the Hanafi expelled the Shafi'ee from the region. Then the Mongols invaded and took over all together.

3. **The Conversion of the Mongols**
   The conversion of the Mongols greatly increased the number of Muslims, particularly in China.

4. **Frequent clashes with Christendom**
   Even though the Christians (Europeans) were trying to find trade routes outside of the Muslim lands, clashes nonetheless arose for important routes to eastern trade.

5. **Loss of Islamic territories to the Europeans**
   Relationship between the early colonies in the United States and the Muslim world dates back to the 17th century. There were diplomatic relations established between the Islamic State of North Africa and the United States; there were businesses, trade etc. However, there was also some friction due to the dealings of the United States in slavery. The Americans would come to the African states, attack and kidnap people and force them into slavery in America.

Factors affecting Fiqh

1. **Loss of great resources of knowledge**
   We did not lose resources only in Baghdad after its sacking, but also in Al-Andalus. Al-Andalus was considered the beauty of the Islamic State. It was called Durat al-taj al Islami (the Gem of the Islamic Crown). A lot of resources of Fiqh and knowledge were lost from there.

2. **Cancellation of Ijtihad**
   Ijtihad was prohibited at the state level and anyone who practiced Ijtihad would be legally prosecuted (e.g. Ibn Taymiyyah)
3. **Prevalence of the spirit of Taqleed**
   The spirit of taqleed became the norm and prevailed over the spirit of knowledge and free research.

4. **Loss of connection between scholars of different regions**
   Since the various Islamic States were preoccupied with civil wars and battles, development in Fiqh was stunted. Although there was correspondence between scholars in different regions, it was very limited due to the political turmoil of the time. There was some correspondence between 'ulema' from Al-Andalus and North Africa, but there was none between the east and west.

5. **The abridged versions of books of Fiqh**
   The Mutun (abridged versions of the books of Fiqh) became the norm in learning, and studying Fiqh and Islamic law. The students did not want to read the mutawalaat (large encyclopedias of Fiqh) so they asked

the ‘ulema’ to summarize them. However, the languages used in the Mutun were very sophisticated and therefore it needed to be explained. This led the ‘ulema’ of the time to write commentaries on the Mutun. In this manner, the mutawalaat were summarized then enlarged to commentaries, summarized and enlarged. The commentaries were very well done; making Fiqh more organized and sophisticated. These works of the ‘ulema’ embodied the spirit of taqleed, giving preference to the final rulings resulting from the four great imams.

6. **Emergence of attempts at reformation in Fiqh**
   Many Fuqaha’ revolted against this type of attitude of uncritical following of the Fiqh and Islamic law. Some of these were Imam Ibn Taymiyyah, Imam As-Suyooti, Imam Sadiq Hassan Khan Sanuji, and other ‘ulema’ from all the madhahib and from North Africa and Asia. These scholars tried to revive Fiqh and the spirit of ittiba’ and thus moved against the culture of making Fiqh a stagnant science.

7. **Unprecedented rivalry of the European law code**
   The Europeans almost stole the laws of the Islamic State specifically from Spain but they did a better job in deriving provisions and bylaws to make it easy for the general populous to understand. The Muslims did not have the tradition of making Fiqh into bylaws that would make it easy for the judges and others to study and apply the law. The Muslims were only able to summarize the Fiqh into Mutun. After seeing the example of the European law code, the Muslims established the constitution of Fiqh.

   By the end of Ottoman Khilafah, Muslims were trying to copy and emulate the European bylaws because they were fascinated with the ones from the Europeans. Thus, they started establishing a reformation movement to the Islamic law. In preparation for the Islamic Khilafah in the Ottoman Empire, they invented the system to start using these bylaws in the courts to make it more organized. Abu Haneefah’s madhab was the official madhab of the Ottoman state, so the Fiqh was taken from this Madhab. The developed bylaws were called the Majallat al-Ahkam-Al-Adliyyah – the magazine of the Juristic code (bylaws of Islamic State). This piece of work developed gradually; by taking one section of Fiqh at a time, the fuqaha and contemporary lawyers would reform Fiqh into laws and present it to state in a well organized and coherent manner. However, due to the advent of the First World War, this work was never completed. The portion that was completed is preserved and available in libraries.

Faqeeh says…

Majallat al-Ahkam al-Adliyyah (Or the Just code journal) is considered a contemporary source for the Hanafi Madhab. The work itself was one of the attempts at reformation at the end of this period. The attempt was to codify Islamic law under the auspices of the Ottoman Khilafah.

8. **Reformation of Islamic Institutes (E.g. al-Azhar (in Egypt) and al-Qurawiyyoon (in North Africa))**
   During this Stage, efforts were introduced to improve the quality of the educational institutes by adding contemporary sciences, such as engineering, math and medicine. There was great resistance to this movement in the beginning; however, the movement was eventually successful, and many schools began teaching secular studies as well as Fiqh, Arabic etc. Although the purpose of this movement was to expose the fuqaha’ to issues and disciplines that were prevalent at the time, in the end, the schools produced fuqaha’ that were relatively weaker in their understanding of Islam than their predecessors who were more focused on only Islamic studies.

Fiqh between Ijtihad and Taqleed

Gems from the great Fuqaha': Words of the great Imams:

It is not permitted for anyone to accept our views if they do not know from where we got those views.
[Imam Abu Haneefah رحمه الله, from *Hashi'yat Ibn 'Abideen*]

Once a man came to Imam Abu Hanifa asking for an opinion, after he was given the opinion the man asked him "Is this the true opinion of which there is no doubt?" Imam Abu Hanifa said "I do not know this might be the false opinion of which there is no truth."

Truly I am only a mortal: I make mistakes and I am correct sometimes. Therefore, look into my opinions: all that agrees with the Book and the Sunnah, accept it and all that does not agree with the Book and Sunnah, ignore it.
[Imam Malik ibn Anas رحمه الله from *Jami' Bayan al-'Ilm wa Fadluh*]

When a Hadeeth is found to be Saheeh, then that is my Madhab.
[Imam ash-Shafi'ee رحمه الله, from *Majmoo' an-Nawawi*]

"Do not follow my opinion, neither follow the opinion of Malik, nor ash-Sharfi'ee, nor Awza'I, nor ath-Thawri, but take from where they took."
[Imam Ahmad ibn Hanbal رحمه الله from I'lam al-Muqaqqi'een]

Rulings of Taqleed

- **Definition:**
  In the Arabic language, Taqleed literally means placing something around the neck. The word for necklace in Arabic is Qilaadah. Technically speaking, however, it means following a qualified scholarship. Some add to this "uncritical following of a qualified scholarship".

  Taqleed can also mean "following he whose sayings are not approved". In other words, the person providing the ruling is not giving a proof but he is relaying the information of what was given before by those who were the legal authority at one time. He is not a mujtahid so his statements are not Hujjah. The Hujjah is the source which comes from an authority e.g. Maliki, Shafi'ee, Hanbali etc. The person doing the following is basically saying, "I am circling my destiny around you".

- **Reasons for Taqleed**
  Some of the reasons mentioned in the legal fatawa advocating Taqleed are:

  - Taqleed dispels any confusion in Fiqh. Following a qualified scholarship is much easier for those who do not have the capacity to study and/or deduce laws for themselves.

- Nowadays, we do not have many individuals who are qualified to be mujtahideen, and by not following taqleed, we will be making ijtihad, which is outside of our capacity. So, there are only two options: either we are muqallid or mujtahid; if you are not qualified to be mujtahid, then you must be muqallid.

- There is ijma of the scholars that people should follow one of the madhahib and if one does not comply, then they are breaking ijma' which is an innovation and a danger to the faith.

- If we do not follow one Madhab, then we are following our desires, which leads to sin/deviation. One explanation for this is that if one relies on one's self to interpret legislation, then one's nafs may influence the process by which the law is deduced.

- If you interpret an ayah and that interpretation is wrong then you are a Kaafir. However, this is an extreme view because of the following hadeeth:

'Amr ibn Al-'Aas narrated, "When the Hakim makes Ijtihad and is correct, he will receive two rewards; while he who does so and is incorrect will receive one reward." (alBukhari)

- **Is the Muslim obliged to adhere to one madhab?**
  There are claims that, historically, all Muslims confined selves to one madhab. This statement may be valid more from a cultural standpoint than from a Fiqh (juristic) standpoint. It is true that the people in Pakistan will most likely be following the Hanafi madhab, and people from other cultures will follow another madhab; however, this cannot be considered as ijma'.

  The 'ulema' say that being obliged to adhere to one madhab depends on the status of the person. The lay-person who is not knowledgeable in areas such as Shari'ah, Fiqh, usool, and who is not exposed to books of ahadeeth, Fiqh etc. and would therefore be confused greatly, should confine themselves to one madhab. But if a person sees of himself that he has a certain degree of knowledge, and that he is in the process of learning, then he should in the beginning make taqleed (i.e. follow an Imam that is still alive, or one of the five madhahib, including madhab ahl al-hadeeth), then begin to refine his practice until he eventually will not need to follow on particular madhab. It should be noted that the average person is not qualified to make his own ijtihad.

  Regarding which madhab to follow, we cannot say that all madhahib are correct; however, we can say that they are all valid to follow. If we say they are all correct, then we are saying that every element in each madhab is correct and accurate. This is not true; the opinions of the madhahib are based on legitimate reasons but they may be incorrect since RasulAllah said that there will be mistakes with the ijtihad of the mujtahid. Fiqh is similar to grading a math test in which the quality of the process is sometimes more important than the final answer. Thus, if a mujtahid used a good, sound process in deducing a law, Allah will reward him for his effort but it is still possible that his final opinion is wrong.

  We should study and follow the madhab of our communities or our localities. We do not have to practice every single opinion of that madhab if we know that there is another sunnah proven to be more authentic. The Madhab is like a general guideline which we can begin with, and then start to refine our practices in accordance with the authentic ahadeeth that reach us.

- **The advantages and disadvantages of Taqleed**

Advantages:

1. Confusion is lifted
2. Not feeling isolated or different from the community; feeling the same as the people you are around. This is advantageous because the community is united.
3. Eliminates following one's desires, and fatwa shopping.
4. Eliminates the intruders of Fiqh. They are the guys who read one book, then think they are muftis so go and start giving fatwa left and right. Taqleed eliminates them because one only needs to say to them for example, "I am Shafi'ee so this is the ruling that I am following."
5. Helps the average person, and specifically the masses to develop Fiqh in an easy way.

Disadvantages:

1. Strict adherence to a madhab can cause one to adopt opinions against the Sunnah of Rasulullah. It becomes dangerous when a person forgets the Hadeeth and strictly follows a Madhab e.g. some muftis, when asked a question, give an answer according to their madhab, and when an authentic hadeeth from Al-Bukhari or Muslim is shown to them, they reply, "According to this hadeeth, we should be doing so and so… but I am Maliki". Confining ourselves to a madhab because we believe Taqleed is the legitimate way of following the Qur'an and Sunnah leads to rejecting opinions that we might believe are from the Sunnah.
2. Abandoning the daleel in preference for the statement of the Imam. If we are muqallid, we cannot ask for the daleel. There is a saying, "In front of the Shaykh, you should be like a dead body in the hands of the washer", so we just say thank you very much, and take whatever they give us without thinking.
3. Approving contradictory opinions by believing that every madhab and every opinion is correct.
4. This then justifies fatwa-shopping for people. This is when people start going after what is easy. By agreeing to Taqleed you will claim that every Madhab is valid. This leads to fatwa-shopping by the masses.
5. Creating a new dogma in fiqh. Promotion of madhahib led to a new dogma i.e. madhab sectarianism, madhab 'aqeedah. Madhab becomes like one of the Arkan al-Islam, the 6 beliefs plus the madhab, so if a person does not follow a madhab, he is a deviant.

- **Imams and their positions on Taqleed**

The Arabic word for critical following is Ittiba'. Asking for a daleel is practicing ittiba'. Ittiba' enhances the quality of Fiqh. It was promoted by the fuqaha' in the past, and encouraged for students of knowledge. The Imams of the four madhahib were against taqleed, and all indicated that students should only follow only what is correct from them, and not follow blindly. This idea of asking for daleel to understand Fiqh is generally encouraged nowadays, unlike the past when some people would have found it offensive.

Ibn Khuwayzm, a Maliki scholar, was an advocate of ittiba' and wrote a book about it. Recently the 'ulema' started to create a culture of ittiba' among the followers of their own madhahib. They print the Matn and add footnotes that contain evidences, hadeeth, and ayat, thus enhancing the quality of Fiqh. Knowing the daleel is very healthy for following one particular school of thought.

Rulings of Ijtihad

- **Definition**

The term Ijtihad is derived from ج هـ د , which means to expend some effort in order to reach some difficult matter. Technically, ijtihad means to expend effort to arrive at a Shari'ah ruling. From this definition we can extrapolate that Shari'ah rulings are difficult to arrive at, and not everyone can do this.

The Mujtahid is one who practices Ijtihad, and the Muqallid is one who practices Taqleed.

- **Prerequisites of Ijtihad and Mujtahid**
  The Mujtahid should
  1. Know all the shari'ah proofs on the topic which he/she needs in doing his/her ijitihad (needs to know ayat, ahadeeth, the juristic codes and usool (principles) that are needed to arrive at a certain opinion/ruling of shari'ah).
  2. Know the science of hadeeth, i.e. know what relates to the authenticity or weakness of the Hadeeth (the isnad, the ilal, etc.).
  3. Know the rules of abrogration (nasikh wal mansookh) for the ayat: which were abrogated and which were not and the ahadith: which came first and which came later.
  4. Know the textual implications of the texts i.e. the Qur'an and the Sunnah. In other word he/she should know and understand terminologies such as the general, the particular, the absolute, the qualified etc.
  5. Be knowledgeable in the Arabic Language. This does not necessarily mean knowing how to speak it, but at the very least, the Mujtahid should know how to properly translate and understand the text
  6. Be a hafidh of ayatul ahkam (legal verses in the Qur'an, which cover the legal matters of shari'ah) but not necessarily a hafidh of the whole Qur'an. Ibn Al-arabi counted the legal ayat of the Qur'an to be about 800 ayat.
  7. Have the ability to extract the ruling from the evidences, i.e. he/she must have a certain level of intelligence; must be an intellectual.
  8. There are other requirements as well.

- **Is every Mujtahid correct in his Ijtihad?**
  Most 'ulema' say a mujtahid may be correct in his ijtihad but not necessarily in his opinion. There is no guarantee that everyone is right in his opinion. If someone claims that everyone is right in his opinion then he will be going against the following hadeeth of RasulAllah sal Allahu alayhi wa Sallam.

'Amr ibn Al-'Aas narrated, "When the Hakim makes Ijtihad and is correct, he will receive two rewards; while he who does so and is incorrect will receive one reward." (alBukhari)

Therefore, if the opinion is wrong, the mujtahid is still rewarded. We can deduce from this hadeeth that a Mujtahid is fallible. A student of knowledge should try his best to find out what is right and what is wrong i.e. look for the truth.

So we cannot say that all the madhahib are correct, but we can say that they are all valid. If we say all the madhahib are correct, then we will be accepting all the contradictory opinions. This is very confusing and justifies people jumping from one madhab to the other, following their desires, and convenience. However, the methodologies used by each madhab are valid. So if we chose to follow a madhab, we will be following a right methodology but the opinion may not be correct, and if we chose to stick to the opinion of the madhab, then may Allah subhaanahu wa ta'aala reward us for that.

- **Is Ijtihad possible today?**
  There are people who are Mujtahid today, and it is possible for 'ulema' to arrive at this level. However, the mujtahideen are among the most humble people on earth and therefore, they do not expose themselves to the

public eye. In order to find them you have to seek them out – they may be at some classical schools or in little known remote areas.

Today, Fiqh has been infiltrated by state supported mufteen, but these are like political positions rather than real fatwa positions. No one can really claim to be a mujtahid and if they do, then they have to prove their Fiqh. They can claim to be a muqallid but not mujtahid because if they do so, this will somehow affect their credibility. However, collective Ijtihad is possible, and easy to arrive at today. Conferences and gatherings take place where scholars of different specialties discuss rulings and arrive at a collective ijtihad. This is like a group ijtihad, and this form of ijtihad becomes the responsibility of the group, not the responsibility of individuals like it used to be in the past. With regards to absolute Ijtihad (which is a single person making Ijtihad), it is possible but very difficult to achieve.

- **Rulings of Talfeeq**
  Talfeeq is mixing between opinions in order to get your own madhab so as to make things easy on yourself. Practicing talfeeq implies following the concession of all the madhahib. People choose rulings from different madhahib according to when it is convenient (an example would be following Ibn Hazm's ruling on music but not following his ruling on praying Salaah in congregation). These concessions may be a mistake on the part of the madhab so the practice of Talfeeq is haram, and a deviation.

- **The advantages and disadvantages of allowing Ijtihad**
  Advantages
  1. Preference of the Daleel over the statements of a human being.
  2. Reduces madhab factionalism and removes hatred of other madhahib. Allows the different madhahib to benefit and learn from each other.
  3. Apply the Qur'an and Sunnah (Fiqh An-Nawazil) to the new events
  4. Adherence to the Madhab of Rasulullah; bringing people to the basis of this deen.
  5. Mental/Intellectual Liberation

  Disadvantage
  1. Authority to make ijtihad and give fatwa is sometimes granted to unqualified people
  2. Claiming that ijtihaad violates the ijma' of past 'ulema' to follow the opinions of one madhab since we are not really supposed to break an ijma'
  3. Sometimes this leads to disregard for the legacy of the great 'ulema' in our history.
  4. Creating confusion for untrained people in matters of Fiqh.

  At our individual level, we should follow the leadership of our community in matters of Ijtihad. Even if we disagree, we should not create fitnah in the community by trying to call everyone to our way.

- **The ruling of Ittiba'**
  Ittiba' is the critical following of a qualified scholarship. It requires knowing the daleel of the rulings and the process of deriving the rulings. Ittiba' necessitates seeking out the truth (haqq), in contrast to taqleed, which is uncritical following of a qualified scholarship, and talfeeq, which is seeking out and following the concessions in each madhahib. Ittiba' promotes an attachment to what is contained in the Qur'an and Sunnah rather than allegiance to a particular individual or madhab. Ittiba' is not about going after the concessions but about going after the evidences and usool, so if an individual was following one particular opinion for all of his life but a new one was presented to him, he may take that new opinion based on the daleel regardless of whether this new opinion makes things harder or easier on him.

Rulings of Fatwa and Mufti

- **The etiquette of Fatwa**
  1. Confirm and verify the source (i.e. the book, imam, alim, shaykh). Do not accept a fatwa if there is no evidence given or if someone says “I can’t tell you”.
  2. Fatawa should be clear and public.
  3. Don’t answer every question you are asked. Say “Allahu alam” or “Laa Adree” and if you only know partially, still say “Laa Adree”.
  4. Do not give fatwa regarding marital relationships or Salaah because in these cases the people are looking for the hukm (legal verdict). Hukm is law, and therefore binding, Fatwa is an opinion and therefore optional.
  5. Always clarify the terminology and understand the wording of the question clearly. It is okay to ask for the question to be repeated many times and to ask about every possible scenario.
  6. If it is matter of judgment (hukm), hear both sides of the story.
  7. If someone around you is more qualified, do not even open your mouth!

- **The etiquette of Mufti**

  The Mufti must have
  1. Knowledge
  2. Wisdom
  3. Patience (hilm)
  4. Trustworthiness
  5. Fear of Allah subhaanahu wa ta'aala
  6. Honesty

The Early Reformist: Shaykh al-Islam

Abul-'Abbas Ahmad ibn 'Abdul-Haleem Ibn Taymiyyah

"ما يصنع أعدائي بي؟ أنا جنتي و بستاني في صدري, أنى رحلت فهي معي، لا تفار قني، أنا حبسي خلوة، و قتلي شهادة، و إخراجي من بلدي سياحة"

What can my enemies do to me? I have my paradise and my garden in my heart; wherever I journey; it's there with me, and never departs from me. My imprisonment is seclusion, my murder is martyrdom and my expulsion from my homeland is tourism.

[Shaykh al-Islam Ibn Taymiyyah]

Ibn Taymiyyah said this while he was imprisoned for the last time (i.e. during the last days of his life). This statement shows one of the qualities of a leader, always being positive.

"ما رأيت مثله، رلا رأى هو مثل نفسه، وما رأيت أحدا أعلم بكتاب الله وسنة رسوله، ولا أتبع لهما منه"

[الحافظ جمال الدين المزي رحمه الله]

I have not seen the likes of him, and his own eye had not seen the likes of himself. And I have not seen one who was more knowledgeable than him of the Book and the Sunnah of His Messenger, Or one who followed them more closely.

[al-Hafidh al-Mizzi]

"ما كنت أرى أن يكون في الدنيا مثله. لما اجتمعت بابن تيمية رأيت رجع كل العلوم بين عينيه يأخذ ما يريد ويدع ما يريد".

[ابن دقيق العيد رحمه الله]

By Allah, I did not think that there remained the likes of him. When I met Ibn Taymiyyah I saw a man with all the sciences in front of his eyes, he took from them what he wished and he left what he wished.

[al-Hafidh ibn Daqeeq al-'Eid]

Al-Hafidh ibn Daqeeq al-'Eid was not a fan of Ibn Taymiyyah but he realized how much knowledge Ibn Taymiyyah had. Ibn Daqeeq said, it was as if a book of knowledge was put on Ibn Taymiyyah's forehead and he was reading from it.

Why Ibn Taymiyyah?

During the time of stagnation, not all the 'ulema' confined themselves to one particular madhab. There were some 'ulema' who tried to reform the area of Fiqh, and almost everything else in this situation. One such 'ulema' was Shaykh al-Islam Ibn Taymiyyah. He was unjustly accused of being the cause of all the fitan in the Muslim world. He was also labeled as being anti-Sufi, and anti-Ash'ariy, but he was even stronger in their methodology than they were, so when he debated with them he would ask them to bring all their evidences and if they forgot any he would remind them and then begin refuting them. He was so powerful and strong in dawah, he even engaged in debates in the royal court of Egypt and Ash-sham. He also exhibited the strong leadership quality of always being positive.

In order to understand why Ibn Taymiyyah took the path of ittiba' and independence, we need to understand the circumstances he was born into.

From the life of the Imam

- **His early life**
  His full name was Abul-'Abbas Ahmad ibn Abdul Haleem ibn Taymiyyah.

Faqeeh Says…

Taymiyyah was the great grandmother of his great grandfather. The whole family afterwards was attributed to her, and her children were called Ibn Taymiyyah "the son of Taymiyyah" after that. She was a wise lady and a female scholar of the family, as well as a righteous woman who was known for her admonitions.

She was also a Fuqhaa' of Madhab Imam Ahmad.

Ibn Taymiyyah was born in Damashq at a time similar to us. There was no central Khilafah; the Abbasid Khilafah was gone. The Mamluks were ruling Ash-Sham and they were fighting North Africa and other places and they were also being hit by the 2nd or 3rd wave of the Mongols. Baghdad was gone.

Ibn Taymiyyah as a child was very well known for being intelligent, and for his memorization. His student Ibn Abdul Hadi said he was very well known for being a knowledgeable child and it was easy for him to memorize. He was able to retain knowledge easily and quickly. When Ibn Tayimiyyah was young, a shaykh from Syria came looking for him. The shaykh went to a taylor on the main market and asked about Ibn Taymiyyah. The taylor told him how to find Ibn Taymiyyah coming from school. When a group of children came carrying their tablets, the taylor showed him Ibn Taymiyyah, and informed him that Ibn Taymiyyah was the one carrying the big tablet. The shaykh then asked Ibn Taymiyyah if he was Ibn Abdul Haleem, and when Ibn Taymiyyah said yes, the shaykh took his tablet and wrote a few words on it then gave it back to him. The shaykh asked Ibn Taymiyyah if he got what was written on the tablet, then he took the tablet away from Ibn Taymiyyah. The Shaykh then asked Ibn Taymiyyah to recite it and Ibn Taymiyyah was able to do so perfectly. This was done three times and afterwards the shaykh said that he had never seen anything like this in his life, meaning that he thought this kind of knowledge and memory was gone forever. The shaykh further said that if Ibn Taymiyyah lived longer, he would have an impact on the ummah; and this was exactly what happened.

Ibn Taymiyyah filled the world with his light, and he occupied the people with his affairs. Everyone was always talking about him. The books of Shaf'iyyah, Hanafiyyah and Hanabilah mention Ibn Taymiyyah. Even Ibn Hajr talks highly about Ibn Taymiyyah in his book, Fath al-Bari.

- **His Shuyookh**
  1. His father was *'Abdul Haleem ibn Taymiyyah.*
  2. His grandfather was *Abu Barakaat Najmudeen Abdus-Salam.*

Both were Fuqaha' of the Hanbali Madhab. His grandfather wrote books on the Madhab of Imam Ahmad and on ahadeeth. He also wrote a book on the usool of Imam Ahmad and he never wasted a moment in his life. Even when he went to the restroom, he would ask someone to read to him from the outside, and when he came out he would continue reading.

- **His students**
  1. Al Imam Ibn al-Qayyim al-Jawziyyah – He was Ibn Taymiyyah's companion for almost 10 years. It is amazing how he describes the knowledge, power, strength, ikhlaas and relationship with his Shaykh.
  2. Ibn Kathir- He is the author of Tafsir Ibn Kathir. Even though he was Shafi'ee, he could not resist being attracted to Ibn Taymiyyah.
  3. Imam adh-Dhahabi- He wrote about ibn Taymiyyah, and even though he praised him highly, he also said that Ibn Taymiyyah was tough on people so this might have been the cause of why so many people turned away from him. Some argue that Ibn Taymiyyah was frustrated by the fact that there were crisis in the ummah and the fuqaha' were discussing marginal issues of Fiqh.
  4. Imam Ibn Abdul Hadi al-Hanbali – wrote a full biography of Ibn Taymiyyah's life.

- **His Jihad against the Mongols**

  Ibn Taymiyyah personally participated in the battle field against the Mongols, and he personally recruited the people - even the 'umera'- to fight. He went to the 'umera', the political leaders of Ash-Sham, who escaped and went to Egypt after the invasion of the Mongols. He told the 'umera' that he will lead the people so all they need to do is to give their support. Unfortunately most of the Mamluk 'umera' were busy fighting against each other to take the rule. This created a lot of animosity among the 'umera', and even the fuqaha' would support one ameer over the other. Ibn Taymiyyah also asked the people of Egypt to support the people of Ash-Sham. To prepare for battle, Ibn Taymiyyah would do exercises such as hiking a famous mountain in Damashq two or three times a day.

  When the Mongols started claiming that they were becoming Muslims, he went to debate with one of their leaders. Due to their own strong personality, the kings were impressed with how strong Ibn Taymiyyah was. He asked the leader to release the prisoners of war who were both Muslims and Ahl al-Dhimma. The leaders were not happy with this, but Ibn Taymiyyah insisted that Ahl al-Dhimma belonged to the Muslims and were the responsibility of the Muslims so they must be released also. Thus, he was able to get the Muslim and non-Muslim prisoners released after one battle.

- **His works**

  Everyone admitted that his knowledge was so great that they had to accept his opinions in many issues, even if they didn't like him. During his life he wrote a book called al-Wasatiyyah. This was a book in 'aqeedah of Ahl as-Sunnah wal-Jama'a that was given as a response to the Iraqis. Although, the book is relatively well sized, it was just a response to a question that Ibn Taymiyyah was asked, and he wrote it between Dhuhr and 'Asr. Many of his books were written just in order to respond to questions from different people and sometimes they were completed in just one session.

  Ibn Taymiyyah was the one who revived the Aqeedah of Ahl as-Sunnah when it was almost dead. Even today, the extreme modernists take Ibn Taymiyyah as a model of their movement. We don't take these people's extreme ideas even though he was a model of reform in his time. He revived the notion of ijtihad and because of this, many later fuqaha' opened their eyes and said that taqleed is not a must. However, it took the people a few generations to realize that. He was not the first person to go independent but he was exceptional. He started to establish the affairs of the people without considering himself a political figure so the people did take him as their unofficial leader. Even in modern day, those who established Fiqh al-hadeeth took a lot of their principles from Ibn Taymiyyah; even in Africa they are following the same example. He left a great legacy, and in 'aqeedah as well he left a great amount of books.

- **His Ordeal, Death and Funeral**

On account of his courage and his outspokenness, he was against the general fatwa of following one madhab. He would follow the hadeeth and sunnah of RasulAllah sal Allahu alayhi wa Sallam instead of blindly following the opinion from one madhab, even though he grew up as Hanbali. He also believed in a level of ijtihad. Therefore, some of his fatawa provoked the Muslims of his time. For instance, although all the scholars of his time said that three divorces in one session was a final divorce, Ibn Taymiyyah said that this was only one divorce because this was the practice in the time of RasulAllah sal Allahu alayhi wa Sallam and also the hadeeth is in Sahih Al-Bukhari. Ibn Taymiyyah also said that visiting the grave of the Prophet as part of Hajj was a Bid'ah, and the correct thing to do is to visit the masjid of RasulAllah sal Allahu alayhi wa Sallam. Because of his fatawa, the other fuqaha' considered this a deviation on the part of Ibn Taymiyyah so they had him imprisoned many times in Syria and in Egypt. They also insisted that Ibn Taymiyyah stop giving fatawa.

After getting permission from the muftis of the four madhahib, one of the 'umera' of the Mamluk placed Ibn Taymiyyah in prison. Ibn Taymiyyah would be imprisoned and released and then imprisoned again, back and forth depending on the Ameer. Ibn Kathir, one of the students of Ibn Taymiyyah said that in one instance when An-Naasir ibn Qalawun, who loved Ibn Taymiyyah, became the Ameer he released Ibn Taymiyyah. When Ibn Taymiyyah was brought in the royal court in front of the muftis who had him imprisoned, Naasir jumped up and hugged him and then they went onto the balcony to have a conversation. This created tension in the room because everyone was expecting Ibn Taymiyyah to take retaliation; however when they returned from the balcony they were holding hands, and Ibn Taymiyyah was thanking and praising Naasir and speaking highly of his muftis. Ibn Kathir said that he later asked Ibn Taymiyyah about the conversation on the balcony and Ibn Taymiyyah replied that Naasir was trying to take a consultation as to what to do with the muftis; should they be assassinated for their support of the other Mamluk Ameer. However, Ibn Taymiyyah said no, because the Muftis are the elite of the ummah so if they are killed then there will be no one to lead the people. One of the judges of the Maliki madhab said that they had never seen anyone who was more righteous than Ibn Taymiyyah; he said, "We tried everything to get rid of him even trying to provoke the Ameer to kill him but when Ibn Taymiyyah was given the chance to retaliate, he forgave us". The fact that he forgave the people who imprisoned him at a time when he could have easily retaliated shows us something about Ibn Taymiyyah. The muftis continued to provoke the Ameer until Ibn Qalawun told Ibn Taymiyyah to stop giving fatawa in public; however Ibn Taymiyyah insisted so Ibn Qalawun imprisoned him. Ibn Taymiyyah asked to be imprisoned in Egypt and this was where he spent the last days of his life.

Although, Ibn Taymiyyah was imprisoned during the last few months of his life, he still corresponded with his mom, friends and students. Eventually, the leaders took away Ibn Taymiyyah's writing materials because the Fuqaha' complained that his opinions were still coming out even though he was in prison. Ibn Qayyim Al-Jawziyyah, his student, was in jail with him at the same time. When his writing materials were taken away, Ibn Taymiyyah became really depressed and this lead to his death. Ibn Kathir was amongst those who helped prepare Ibn Taymiyyah for burial and he said that Ibn Taymiyyah had changed a lot. Ibn Kathir explained that "You could see that his hair turned grey". When he was taken out to be buried, the people said that they had never seen anything as big as his Janazah except for the Janazah of Imam Ahmad ibn Hanbal in Baghdad.

Ibn Taymiyyah In the eyes of his supporters and his opponents
His opponents tried everything to get rid of him, even to kill him. But, when he was given the chance to retaliate, he chose to forgive them. Many Fuquha' of the time praised him for his righteousness. Today, there are claims that he is the founder of Wahhabbism. This is absolutely false; his statements were exactly the same as the early scholars and sahabah. Ibn Taymiyyah is unjustly labeled as the one causing all of the fitnah of modern era. Other groups label him as anti-Sufi, anti Ash'ariy, etc.

Ibn Hajr, who came after Ibn Taymiyyah, mentioned Ibn Taymiyyah many times in his book Fath al-Bari, even though he did not like Ibn Taymiyyah's attitude in the community. Ibn Hajr compared Ibn Taymiyyah to Ibn Hazm in that they both had harsh attitudes towards the Fuqaha' of their time. Nevertheless, they all accepted Ibn Taymiyyah's opinions because of his great intelligence and knowledge.

His contributions of Fiqh
Ibn Taymiyyah revived Ijtihad and opened the eyes and minds of people to the fact that taqleed is not required. Even some extreme modernists today take Ibn Taymiyyah as model of revolution. He was considered a revolutionist imam who revived the following of the Qur'an and Sunnah.

Ibn Taymiyyah In the eyes of our contemporaries
Imam Hassan An-Nadawai was a comtemporary scholar from India who wrote 300 pages on his biography and praised Ibn Taymiyyah. Sheikh Muhammad Abu Zuhra from Azhar wrote a biography on Ibn Taymiyyah as well.

Prominent Fuqaha' of this Stage

Fuqaha' of the Hanafi Madhab
1. Imam an-Nasafi After 710H/1310CE
2. Badr ad-Deen al-'Ayni 762H/1362CE
    - Wrote commentary of Sahih Bukhari with a Hanafi influence
3. Zain ad-Deen Qutlaubgha 870H/1362CE
    - Wrote a book on usool
4. al-Mulla 'Ali al-Qari 1014H/1605CE
5. Muhammad al-Mahdi al-'Abbasi 1315H/1906CE

Fuqaha' of the Maliki Madhab
1. Ahmad ibn Idrees al-Qarafi 684H/1285CE
2. Zain ad-Deen ibn al-Munayyir 695H/1296CE
    - Studied Imam Bukhari's book in a unique way; studied the fiqh from the title of the chapters individually. He said that Imam Bukhari gave the titles for his chapters based on his Fiqh opinions, therefore, the Fiqh of Imam Bukhari is in the titles.
3. Imam ash-Shatibi 790H/1388CE
    - Wrote al-Maqaasid Ash-Shar'iyyah and Al-Muwafaqat
    - He was from Al-Andalus
    - He was a great Imam on Qira'at and wrote great poetry
    - He was blind when he wrote many of his books

   Wrote Higher objectives of Islamic Law

4. Ibn Khaldun 808H/1405CE
    - Wrote al-Muqaddimah
    - He was a sociologist, and probably the first to write about advanced studies of sociology and even anthropology. He wrote about nations and changes in demography and society.
5. Ibrahim ibn Ali Ibn Farhoon 999H/1591CE
    - Authored a famous book on order of court system in Islam.
6. Muhammad ibn Abdullah al-Khirashi 1101H/1689CE
    - Wrote the Matn of the Maliki Madhab and afterwards all other Fuqaha' wrote commentaries on this book

Fuqaha' of the Shafi'ee Madhab

1. 'lz ad-Deen ibn Abdus-Salam 660H/1262CE
    - Suggested that the Mamluki's should be sold in order to be free to become leaders and the money received should go the Islamic community.
2. Yahya ibn Sharaf an-Nawawi After 670H/1272CE
3. Ibn Daqeeq al-'Eid 702H/1304CE
    - Has another book in usool based on Madhab Shafi'ee
4. Taj ad-Deen as-Subki 771H/137CE
    - Added two more volumes after Nawawi died to Imam Nawawi's book- Al-Muha
5. Ibn Hajar al-Asqalani 852H/1448CE
    - Wrote Fath al-Bari Sharh Saheeh al-Bukhari (Commentary on Saheeh al-Bukhari)
6. Jalal ad-Deen as-Suyooti 911H/1505CE
    - One of the ones who wrote tafsir of al-Jalaalain.
    - He left a huge legacy of Fiqh according to Madhab Shafi'ee. Wrote books on Shafi'ee Fiqh, usool, tafseer and the generations of Shafi'iyyah (their biographies, who they were etc)
    - He was among the few who revolted against the culture of taqleed
    - He was criticized by the Fuqaha' of his time for his revolt but he could not stand long against their attacks like Ibn Taymiyyah.

Fuqaha' of the Hanbali Madhab

1. Shaykh al-Islam Ibn Taymiyyah 728H/1328CE
2. Ibn Qayyim al-Jawziyyah 751H/1350CE
    - Student of Ibn Taymiyyah.
3. Abdur-Rahman ibn Ahmad ibn Rajab 795H/140CE
    - Author of Commentary on 40 Hadeeth of Nawawi
4. Mansoor ibn Yunus al-Bahooti 1051H/1641CE
5. Muhammad ibn Abdul-Wahhab 1206H/1791CE
    - People consider him the founder of the 'Wahhabi sect', but it is not really a sect.
    - He revolted against the culture of his time and fought against the deviations/shirk of the time using military action.
    - He and his followers were called "ikhwan"
    - They allied with al Saud family to fight against the Mushrikeen in Makkah, Madinah, and Arabia in general, and they even went all the way to Iraq.
    - He was able to establish order and bring back the tribes to the sunnah after they had fallen into shirk such as making tawaf around shrines, graves etc.

- The Ottoman Empire never used to show any interest in the Arabian Peninsula because they considered the people to be Bedouins, nomads etc; however, they demanded allegiance from whoever prevailed there. Many people complained about the attacks of ibn Abdul Wahhab, so the Ottomans sent their deputies to fight against ibn Abdul Wahhab. The Ottomans lost the first battle. However, they later sent a larger army which almost wiped out Muhammad ibn Abdul Wahhab and his children and grandchildren. They were taken into Egypt and then sent back Arabia 10 years later. There he tried to establish the Saudia government but it took another three generations for it to become as we see it today.

Reformers of Fiqh in this Stage

1. Shaykh al-Islam Ibn Taymiyyah 728H/1328CE
2. Shah aliyyullah Dehlawi 1176H/1762CE
    - India
3. ash-Shawkani 1250H/1834CE
    - Yemen
4. Muhammad ibn Abdul-Wahhab 1206H/1791CE
    - Desert of Arabia
5. Jamal ad-Deen al-Afghani 1314H/1896CE
    - Egypt, North Africa and also around the world
6. Muhammad ‘Abduh 1323H/1905CE
    - Mufti of Al-Azhar
    - Had a major role in pushing for the methodology of following Fiqh, and for the acceptance of changes in the bylaws according to the new format in Egypt which was the heart of the Arab world at that time.
    - His students started the liberation movement in the Arab world. They were calling for the liberation of women, removal of hijab etc until it became like we see it now.

Faqeeh says…

Although al-Afghani and his student Muhammad ‘Abduh played a major role in the reformation of Fiqh and other aspects of life at the end of this period, they became very controversial figures because of their extreme views on reformation and due to their suspicious involvement in the Masonic movement and the liberal of their society in the Middle East

Stage Seven

Reformation Era

Islamic Fiqh Wakefulness (1342H-Today/1924CE-Today)

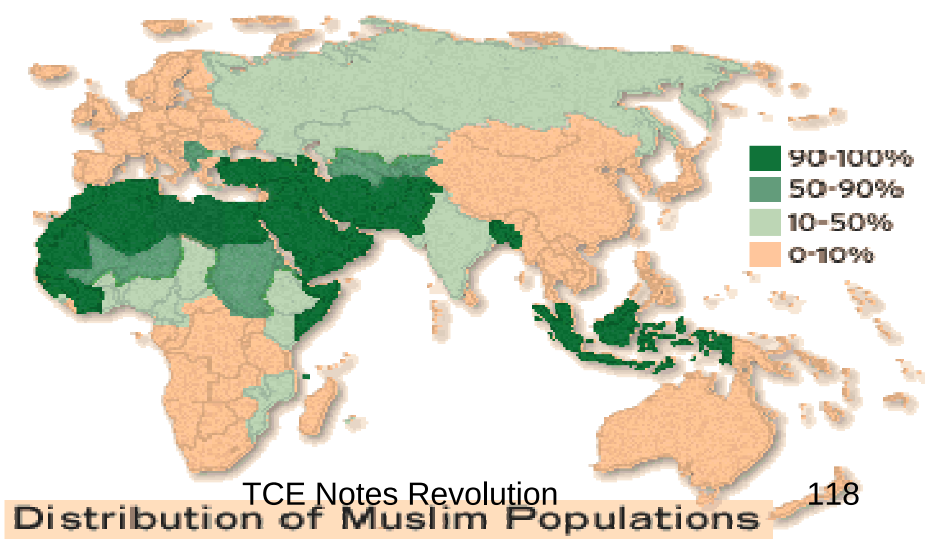
After the first and second world wars, Muslims lost great pieces of land in places such as India, China, central Asia and even Europe. In Africa, many countries were lost following the European expeditions and the Second World War. Pakistan and Bangladesh were split from the main Indian subcontinent. Countries such as the Philippines, Singapore, Indonesia and Malaysia became non-Muslim countries after they were ruled by Muslims for many generations.

Distribution of Muslim Populations
Today, the main concentration of Muslims is in the heart of the Middle East. The highest population of Muslims resides mainly in Africa, Saudia Arabia, Yemen, Oman, Iraq, Jordan, Syria, Egypt, Libya, Tunisia, Algeria, Morocco, Mauritania, Nigeria, Senegal, Somalia, Turkey, Iran, Pakistan, Afghanistan, Bangladesh and all the way down to Malaysia. Then there are between 50-90% of Muslims in other countries. And there are also some Muslims in places like Russia and Central Asia. There is no accurate calculation of Muslims in these countries but in every piece of land, there are some Muslims- even in the small towns in the US; Muslims can be found almost everywhere.

The Sunni and Shi'a in the World
About 90% of the Muslim population is considered Sunni. The Shi'a are concentrated in few geographical regions such as Iran, Iraq, Syria, Lebanon, Turkey, Pakistan, Afghanistan, Yemen and now in some countries in Africa such as Nigeria due to conversion.
Recently, specifically after the events in Iraq, the Shi'a have been trying to spread their ideology almost everywhere in the Muslim world. There are forums between Ahlul Sunnah and Shi'a in some Muslim countries to try to resolve the situation in Iraq. Even Yusuf Qaradawi, an advocate for bringing reconciliation between Sunnah and Shi'a, spoke against the Shi'a for the first time by saying that they (the Shi'a) will only create fitna by trying to convert Muslims; this type of reconciliation is not about conversion but about understanding. His statement was taken as a good sign for the reconciliation process.

Geographical and Political Preview: The Muslim World Today

- **Declaration of Independence**
  After the first and second world wars, the countries that were divided and were European colonies gradually and slowly started to gain their own political independence and build their own states. Even tiny states like Bahrain, which is a tiny island in the middle of the sea, and Kuwait declared to be independent states. The United Arab Emirates (UAE) is the same



Distribution of Muslim Populations

thing; small regions and states all came together to form one. These countries are rich; they have oil, so if one state had been created out of these states, they would have had the power to control the economy of the world thus, they would have become the most influential country of the world. They would have had more than 70-80% of the oil that is on earth and that would make it very difficult for people to negotiate with them. Therefore, the Europeans split them into the smaller countries and they are now in order to deal with these countries independently. Now, these countries are trying to reconcile and create unity but it is not really working very well for each of them has border wars with their neighbors.

- **Formation of Organization of Islamic Conference**
  Since the Muslims lost the Khilaafah they wanted to bring all the Muslims together using an alternative. If they just call for one khalifah, no one will listen to them because the supposedly Muslim countries are following the path of democracy/capitalism. After these countries declared their political independence, they affiliated themselves with the two major parties of the world, the two powers at that time: communism or democracy/capitalism. After the collapse of communist empire, all these countries started to follow democracy. The OIC was formed in an attempt to reconcile these problems that the Muslim countries were facing and unite the Muslims.

- **Formation of the League of Arab States**
  This was also formed to try to bring the Muslims together, in a hope that one day they will unite under one khalifa. However, it does not seem to be working right now. People would not shake hands with each other when they go to the conferences, for example Ghadhafi would go to the conference and would not shake hands with the people and would ridicule the presidents and kings of the Arab world. At the end he chose to dissociate himself from the Arab League and declared Libya to be an African state and he even changed his dress to the traditional African dress.

- **The establishment of the Shi’a state in Iran**

Characteristics of this Stage

1. **Absence of a central Islamic government**
   There is no central government to regulate and govern fiqh matters of the ummah.

2. **Prevalence of Secularism**
   There is secularism and sometimes extreme secularism prevailing in Muslim countries, for example Tunisia. After Tunisia gained political independence in 1960, the president himself would go around removing the hijaab from women in order to promote democracy and liberation. He would touch the faces of the women and tell them that they are too beautiful to be covered up. Tunisia is now considered one of the most extreme Arab countries in the world in terms of secularism. Muslim women are still not allowed to wear the hijaab to work in government places. Another example of secularism is Turkey but now they are going through an "era of reformation and change."

3. **Globalization Era**
   The political and geographical boundaries are no longer protecting many countries from other invading cultures. In the past, specifically during the communist era, there were some countries that used to create steel barriers around their own people in order to prevent the people from seeing anything on the outside. Now these barriers are gone and there is no way to control the people since there is satellite, internet and many other ways of interacting with other societies. Globalization is also affecting the Muslims. However,

globalization has given those Muslims in the west, who were isolated for many years, access to the true culture of the Muslims. Countries such as Uzbekistan and Kazakhstan which were under communism for many years are now partially open to the Muslim world so the Muslims in these countries at least have some kind of access to the Muslim world. Muslims in China and Europe also have access to the Muslim world now.

4. **Establishment of Muslim minorities in the west**
   This is something very unique. It was only about 100-150 years ago that Muslims who lived in non-Muslim lands would travel to live in Muslim lands. Then after the end of the first and second world wars, the migration movement shifted the other way; Muslims are leaving their own countries and going to non-Muslim lands. This has never happened before in such huge numbers. Now there are millions of Muslims outside the Muslim world in huge minorities; they are called minorities but they are in such huge numbers. There are about 6 million Muslims in France, a few million in England as well as Spain, Germany, North America and South America. The situation of the Muslims in remote countries such as Argentina and Brazil is miserable, and only recently have they started to receive attention. The first movement to send du'aat to these countries started in the early 1990's.

5. **Easiness of Communication**
   Communication has become very easy due to cell phones, videoconferences etc. Even if people are not allowed to come to this country, we can still interact with them over the internet, and via satellite etc.

6. **Military Conflicts throughout the Muslim world**
   Whether with Muslims or non-Muslims, almost every single piece of land has some sort of military conflict, for example, Algeria and Morocco, Egypt and Sudan, Somalia, Ethiopia, Saudia Arabia and Yemen, Iran, Iraq, Turkey and Cyprus, Pakistan and India. This is very dangerous and only Allah knows when the situation will explode into a third world war.

Factors Affecting Fiqh

1. **The contemporary Fiqh an Nawaazil**
   We carry cell phones with us not realizing that there are lots of matters of Fiqh regarding it, for example, are we allowed to make any financial transactions over the phone, can we buy gold over the phone, can we buy stocks over the phone, how about driving, what is the hukm of speeding, are we accountable for this on judgement day, what if we are driving 150miles/hour and we get into an accident, what do we consider this. Therefore, almost everything that we do has a ruling of Fiqh. Fiqh an-Nawaazil has expanded and exploded greatly that even the fuqahaa and the council of Islamic Fiqh Academy cannot answer these questions easily and quickly. There are many questions, especially medical questions regarding doing operations and taking medications during Ramadaan for chronic illnesses, e.t.c, that the fuqahaa are still discussing. Fiqh an-Nawaazil is making the ulemaa and fuqahaa very busy and there are not enough mujtahideen to cover these issues. Therefore precedence needs to be given to collective ijtihaad.

2. **Establishment of Islamic organizations**
   Collective ijtihaad can be helped by establishing Islamic academies and organizations. There are many Fiqh organizations and academies throughout the world for example in Saudia Arabia, India, Africa etc. In Europe there is the Fiqh Council of Europe and in America there are AMJA and other organizations of fiqh. All these groups are gathering now to try to solve the new issues by making a collective ijtihaad.

3. **Establishment of the Islamic Fiqh Academy (IFA)-** *see below*
4. **Foundation of Islamic Universities**
   Muslims are trying their best to bring back the Islamic education that were banned in many countries due to the rise of secularism after the second world war. Therefore, there are universities in the Arabian peninsula such as in Saudia Arabia; there is Al-Azhar in Egypt; in North Africa there are Al-Qayrawan and Zaytuna and there are also universities in India and Pakistan and many other countries. Islamic education is becoming very popular so now there is a huge demand to travel to Islamic countries and universities.

5. **Emergence of comparative Fiqh studies**
   In the past generations, people were confined to one particular madhhab and anyone who tried to study another madhhab would be rebuked and ridiculed. Now, many universities are studying or teaching comparative Fiqh in order to bring power to the Muslim community.

6. **Prevalence of literacy**
   Literacy is prevailing in Muslim societies. Just 100 years ago, there were hardly any mus-haf in the masajid in Muslim countries or villages because the people did not know how to read. Now, mashaa Allah, almost everyone is capable of reading, writing and even using different technologies. Plus, there are other reading materials such as magazines and the internet that give people more exposure to knowledge and Islamic sciences.

7. **Spreading of publications**
   There are all kinds of publications available now, for example, Islamic Newspapers. Even the other newspapers now have religious sections.

8. **Pressure of westernization**
   This is affecting even the fatwa sometimes; for example, with the situation of the hijaab in France, a mufti of one of the Muslim countries came in support of the Muslims in France and gave the fatwa that it is OK for the women to remove their hijaab for the sake of education since knowledge is waajib. However, even the Muslims in France rejected this fatwa and told the mufti to mind his own business. Now they are building Islamic schools and the Muslims girls are fighting for their right to show their opinion and to wear the hijaab, believing it to be an Islamic obligation and not something forced upon them.

9. **Politicization of Fiqh and Fatwa**
   Fiqh and Fatwa were once pressured by the politics of the state so every single state made its own fiqh council and had their own grand mufti. The selection of these muftis was sometimes not based on knowledge but on political affiliations. Therefore, the fatwa was no longer objective and the people preferred to take their fatwa from a shaykh, imam, 'aalim or someone not affiliated with the state. This is similar to the beginning of the Islamic state in the time of the Ummayads. The people who hated the Ummayyads and did not want to be affiliated with them in any way, went with the few who were against the hukm and that created a lot of extremism in the Muslim world.

Contemporary Schools of Thought

These are not really Schools of Thought but Methods of Studying Fiqh.

1. **(The School of Fiqh) Al-Azhar School of Thought**
   This is a means of teaching Fiqh based on one madhhab. It was created by Al-Azhar so when a student is applying, he/she must mention his/her madhhab in order to specialize in that madhhab as a senior. There are

many universities such as those in India, Pakistan and Indonesia that teach according to the methodology of Al-Azhar or in general, the School of Fiqh.

2. **(School of Hadeeth) Hijaazi School of Thought**
This is the other method of teaching Fiqh and it means that the schools do not confine to one particular madhhab. The fiqh is taught according to the comtemporary Raji' of comparative fiqh for example, the University of Madeena does not teach one particular madhhab. The student has the option of choosing his fiqh outside the school but academically comparative fiqh is taught. Therefore, they teach the opinions of the four madhaahib as well as other Fuqahaa like Az- Zhahiriyyah, ibn Hazm and other opinions as well. So it is up to the student of knowledge to decide whether to follow this methodology of Ahlul Hadeeth, that is, to take ar Raji', the strongest opinion among the different opinions or to confine to one particular madhhab by following the opinion that is offered from that one madhhab and then study further with one shaykh.

Major Contemporary Fiqh and Fatwa Associations

This depends on the political regions. However, the universal one for all Muslims is the Islamic Fiqh Academy (Majmaa Fiqh al-Islam). This academy emerged from the political group, Organization of Islamic Conference (OIC) and it consists of a group of ulemaa assigned by every single state to reperesent that state in matters of Fiqh and Shari'ah. There are also many other organizations for example, Islamic Research Academy, Al-Azhar in Egypt, European Fatwa Council in Germany, Fatwa Council of Pakistan and India, Islamic Jurists of America Fiqh Council, Assembly of Muslim Jurists of America (AMJA) and other Fiqh organizations affiliated with ISNA, ICNA etc. Their job is to try to serve the Muslim community in their locality as much as possible. So when they are asked for a fatwa, they discuss it and try to answer based on their Fiqh affiliation.

Fiqh and Fatwa Today

The Crisis of Fiqh and Fatwa

- Even though, there are so many Fiqh councils and academy, they have no authority to enforce their Fiqh, especially in a democratic environment like ours. Sometimes, a mufti, the highest authority of Fiqh in the society would give an opinion and some of the people, even those smoking hookah, would disagree with him. These people have no right to disagree with the mufti but this is the culture right now; a Fiqh opinion is given by the highest religious authority in the Muslim ummah and society, but the people are not taking it seriously; they think they have the option of saying no. However, it is not a matter of option to take or not, it is how we approach Fiqh, that is, do we think these fataawa are binding on us or not. Islamically they should be binding, but in the manner that we have discussed, that is, based on whether we follow taqleed or the manner of ittibaa'.

- Another thing about the Fatwa is the lack of Islamic global interest, for example, Islamic conferences don't discuss the problem of global warming. Other organizations in the world are taking interest in these issues. Muslims don't take any interest in these issues as if they are a matter of dunya. Actually, these are not matters of dunya, they are matters of the deen so it is our responsibility as Muslims since Allah subhaanahu wa ta'aala has assigned us as khalifatun fil 'ard to take care of this earth. Because the ulemaa are not showing this global interest, they lost their position of dignity, so now the politicians and environmentalist are leading.

- We have a decline in the number of Muslim or Fiqh experts in Muslim societies. This decline has happened drastically. Just recently, within one decade, many famous shuyookh have died everywhere in the Muslim world. This is like extermination. It is as the hadith of RasulAllah sal Allahu alayhi wa Sallam states that one of the signs of the day of judgment is that Allah subhaanahu wa ta'aala will remove al-ilm (knowledge), not by the taking up of knowledge but by the removal of the ulemaa. The ulemaa will die, so the people will follow ignorant people. These ignorant people will be asked and they will give fatwa, and thus, they will go astray and they lead others astray as well.

- One of the problems we have is the lack of coordination between the Fiqh councils, for example, they fight on the issue of moonsighting, isna with icna etc.

Reprehensible points regarding today's Fatwa

Public concern, and public interest is very important. One of the objectives of Islamic law is the consideration of public welfare. So when a fatwa is given, public welfare must be considered. Most Muslims living in the west call overseas muftis to ask for fatwa regarding things happening in their own localities, and the shaykh would give an answer based on what he perceives, and not on what is actually happening. Therefore, we need to ask someone who is aware of the situation. Muftis on TV have a few minutes to answer the question so they rush the answer and there is no real investigation. Because of this, TV Fataawa cannot be considered as the perfect fataawa.
Faqeeh says… these points usually affect the credibility of the fatwa and the authority.

Where then are we going?

The Role of the Faqeeh and Fiqh Councils Today

1. It is our responsibility as students of knowledge to bring tolerance to the Muslim communities over matters of fiqh disagreement. Give fatwa based upon the Qur'an and Sunnah

2. Try to develop an awareness of Fiqh. Usually people take Fiqh as something exclusive for a specific group among the Muslims for example, fuqahaa, ulemaa, students of madrasa, these kinds of special groups. They don't know that Fiqh is something alive, something they practice and do every single day. So we need to bring this public awareness of Fiqh and fuqahaa. We can do this by starting a translation movement, translating books of Fiqh so people who would like to learn the fiqh but don't know Arabic can study these books. Plus, we can use our personal blogs on the internet to make people aware of fiqh. Also, we can start specific and well organized English Fiqh websites, not necessarily for fatwa, i.e., answering questions, but at least for studying Fiqh, the history of Fiqh, Usool of Fiqh etc., to develop some sort of awareness among the Muslim communities and English speakers.

3. We need to promote comparative Fiqh, we have to try to get people to open their minds to other opinions; we don't have to change them for example make a maliki shafi' or vice versa, but at least we can get them into the culture of accepting the other opinions in matters of Fiqh.

4. It is our job as students of knowledge to try as much as possible to reduce madhhab factionalism specifically by anticipating different Fiqh seasons for example Ramadaan. It is during these times that madhhab factionalism appears a lot, and we should be prepared to educate people about Fiqh.

5. Whenever we are asked a fiqh question we don't know the answer to, we should not just let these types of questions and events slip out of our hands without any answer; we should write the questions down, collect them and then try to bring them up to some of the Islamic Fiqh authorities to help solve the problems of so many Fiqh an Nawaazil, the unprecedented events that are taking place and people don't know what to do about them.

6. It is our responsibility as students of knowledge to use whatever Allah subhaanahu wa ta'aala has blessed us with financially and in terms of technology etc., to spread the deen and at least share this part of Fiqh and Usool al-Fiqh.

Faqeeh says…

What can you do as an al-Maghrib student for the future of Fiqh?

1. *Be the faqeeh of today and the mufti of tomorrow*- Do your best to study fiqh today so that tomorrow you would be able to answer the questions of those who need help. When you answer questions, answer only what you know; if all what you know is Surah Al-Fatihah then don't answer about Surah Al-Baqarah.

2. *Increase your knowledge*- The more you know, the better it will be for the Muslim ummah. Seek your knowledge by attending as many halaqaat as you can as constantly as possible. Be around shuyookh and ulemaa if possible, and listen and expose yourself to their lectures. Make an effort to study Shari'ah, Fiqh or even memorize the Qur'an overseas and then come back to help the Muslim community here. If you cannot do that, then at least help to organize seminars and events as much as possible to keep it in this culture.

3. *Be a good example in following the Sunnah of the Messenger of Allah sal Allahu alayhi wa sallam.*

4. *Never be scared of the different opinions of Fiqh*- People usually get confused and scared when it comes to studying fiqh. If you will always be scared then you will never be able to study Fiqh. However, if you start studying fiqh, you will know how easy it is if you have the knowledge and you will see how the difference amongst the fuqahaa will become pleasing to you in a sense that it will help you to sharpen your skills of studying Shari'ah and Islamic law. Help increase public awareness about Fiqh and issues of Fatwa.

5. *Help increase the public awareness about Fiqh and Usool al-Fiqh studies.*

6. *Join Fiqh sessions and Fiqh forums*- If you find access to some Fiqh forums, then go ahead and join but follow the etiquette of the student of knowledge and never speak out of ignorance; if you don't know the answer, then don't participate.

7. *Take more classes on Fiqh and Usool al-Fiqh studies*- Usool al-Fiqh is very important to understand Fiqh. You cannot just study Fiqh without studying Usool al-Fiqh. Enjoy studying them!

8. *Be alert of every issue of public concern; understand it and discuss it with scholars to come up with a decision.*

9. *Use your different talents and professions to serve the field of Fiqh.*

10. Be the leader others want to follow by setting a good example for them.

11. Learn how to agree the way you learn how to disagree; in both cases, never forget to follow the ethics of disagreement.

12. Help develop the future of Fiqh today in order to become the history of tomorrow.